

# IN THE SUPREME COURT

APPEAL FROM THE MICHIGAN COURT OF APPEALS  
*COOPER, P.J., AND MURPHY AND KELLY, J.J.*

**MARGARET JENKINS**, as Personal  
Representative of the **ESTATE OF**  
**MATTIE HOWARD, DECEASED**,

Plaintiff-Appellee,

Supreme Court  
No. 123957

v

**JAYESH KUMAR PATEL, M.D.**, and  
**COMPREHENSIVE HEALTH**  
**SERVICES, INC.**, a Michigan Corporation,  
d/b/a **THE WELLNESS PLAN**, Jointly and  
Severally,

Court of Appeals  
No. 233116

Wayne County Circuit Court  
No. 98-808834-NH

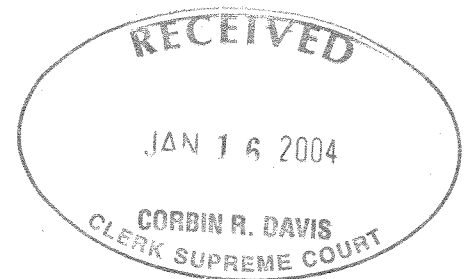
Defendants-Appellants.

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## **BRIEF OF AMICI CURIAE PRONATIONAL INSURANCE COMPANY AND MICHIGAN HEALTH AND HOSPITAL ASSOCIATION**

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## **STATEMENT OF QUESTION INVOLVED**

**I. DOES THE STATUTORY LIMITATION OF NONECONOMIC DAMAGES PROVIDED IN MCL 600.1483 APPLY TO MEDICAL MALPRACTICE CLAIMS ASSERTED IN WRONGFUL DEATH CASES?**

The trial court has answered this question “No.”

The Court of Appeals has answered this question “No.”

The Defendants-Appellants contend the answer is “Yes.”

The Plaintiff-Appellee contends the answer should be “No.”

The *Amici Curiae* contend the answer is “Yes.”

## **STATEMENT OF FACTS**

The *Amici Curiae* shall rely upon the Statement of Facts set forth in the Appellants'

Brief.

## INTEREST OF THE AMICI CURIAE

This *Amicus Curiae* brief is respectfully submitted by *Amici Curiae* ProNational Insurance Company (ProNational) and Michigan Health and Hospital Association (MHA) in support of the Appellants' appeal from the decision of the Michigan Court of Appeals in this case. ProNational, formerly known as PICOM Insurance Company, provides professional liability insurance coverage for doctors and other professionals in Michigan and other states. Medical malpractice coverage provided by ProNational accounts for a substantial share of the medical malpractice insurance coverage provided to Michigan's health care providers. MHA, formerly known as the Michigan Hospital Association, is one of the largest statewide health care organizations in Michigan. In existence for more than 80 years, the association represents more than 150 hospitals and health care systems. MHA acts as the principle advocate on behalf of hospitals and health systems committed to improving community health status. Its primary objective is to link patients, communities and providers together for better health.

PICOM Insurance Company and MHA were among the interested parties who advocated the adoption of additional tort reform measures for medical malpractice cases in the early 1990s. One of the most important, and controversial, measures proposed was the elimination of the exceptions to the cap on noneconomic damages included in MCL 600.1483, as originally enacted in 1986. This was deemed necessary, and thus, became a primary objective of the *Amici* and other interested parties associated with the health care community, because the previously existing exceptions "swallowed the rule," rendering the cap ineffective as a means for controlling the excessive costs of medical malpractice litigation in Michigan.

This important objective was addressed, and in large part accomplished, by the 1993 medical malpractice tort reform legislation, which adopted many of the additional proposed

reforms, including the elimination of the exception which had previously precluded application of the cap on noneconomic damages in wrongful death cases. The *Amici's* support for this change was motivated, in large part, by a desire to control the costs of medical malpractice liability insurance by providing greater certainty in underwriting medical malpractice coverage. It was expected that this would benefit not only the health care industry, but the general public as well, by promoting a broader availability of affordable health care.

In its published decision in this case, the Michigan Court of Appeals has held that MCL 600.1483 does not apply in wrongful death cases, despite the Legislature's controversial elimination of the death exception from the statute by the 1993 amendatory legislation. The *Amici Curiae* are deeply troubled by the decision of the Court of Appeals which, if allowed to stand as the law of Michigan, will effectively eviscerate one of the most important reforms effected by the 1993 legislation. This, the *Amici Curiae* submit, would do a great disservice to the health care industry and the general public. It is for this reason that ProNational and MHA now seek leave to participate as *Amici Curiae* to aid the Court's decision making process in this case.

## SUMMARY OF ARGUMENT

The holding of the Court of Appeals in this case – that the statutory limitation of noneconomic damages under MCL 600.1483 does not apply in wrongful death cases – is erroneous for many reasons. The court has disregarded the clear and unambiguous language of § 1483 and other corresponding sections of the Revised Judicature Act, which plainly require application of the cap, when necessary, in all medical malpractice cases, including those brought under the wrongful death statute. The court has erroneously concluded that there is a conflict between § 1483 and the wrongful death statute, when there is none. When read together *in pari materia*, as they must be, the provisions at issue are easily harmonized, and they require application of § 1483 in all medical malpractice cases without exception.

The Court of Appeals has also disregarded the legislative history of the 1993 medical malpractice tort reform legislation, which provides clear and compelling proof that the Legislature intended to extend the statutory limitation of noneconomic damages to wrongful death cases when it eliminated the prior exception for death cases from § 1483 by the enactment of that legislation. The court has improperly dismissed this compelling evidence of legislative intent in favor of a contrived and tortured application of the doctrine of *ejusdem generis*, a rule of statutory construction which clearly does not apply to the statutory language at issue in this case.

For all of these reasons, discussed in greater detail *infra*, the *Amici Curiae* respectfully contend that the holding of the Court of Appeals is manifestly and fundamentally erroneous, and should therefore be reversed.

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## LEGAL ARGUMENT

### **I. THE STATUTORY LIMITATION OF NONECONOMIC DAMAGES PROVIDED IN MCL 600.1483 IS APPLICABLE TO MEDICAL MALPRACTICE ACTIONS BROUGHT PURSUANT TO THE MICHIGAN WRONGFUL DEATH STATUTE.**

In its published decision issued in this case, the Michigan Court of Appeals has reached the startling conclusion that the limitation of noneconomic damages provided in MCL 600.1483 does not apply in wrongful death cases. Thus, according to the Court of Appeals, while noneconomic damages are capped at the levels established under § 1483 in all medical malpractice actions brought by living plaintiffs, no such limitation applies in medical malpractice cases brought pursuant to the wrongful death statute, and the estate of a deceased victim of malpractice may therefore recover an award of damages limited only by the conscience of the jury.

The *Amici Curiae* contend that this conclusion is fundamentally erroneous for numerous reasons. As discussed in greater detail *infra*, the Court of Appeals has found a conflict between § 1483 and the wrongful death statute where none exists, and has disregarded the plain language of § 1483, which requires the application of the cap in all medical malpractice cases without exception. These errors have been compounded by a grievous misconstruction of § 1483, based upon an improper application of the doctrine of *ejusdem generis*. While improperly applying that rule where it plainly does not fit, the court has disregarded other rules of construction which should properly apply if construction is deemed necessary. It has also inexplicably dismissed and disregarded the legislative history of the 1993 medical malpractice tort reform legislation, which provides compelling evidence

that the Legislature did intend to require application of the cap on noneconomic damages in wrongful death cases when it eliminated the previously existing exception for death cases from the statute.

For all of these reasons, the *Amici Curie* respectfully contend that the decision of the Court of Appeals is manifestly erroneous, and should therefore be reversed.

**A. THE STATUTORY LIMITATION OF NONECONOMIC DAMAGES.**

MCL 600.1483 limits the amount of noneconomic damages which may be recovered in actions alleging medical malpractice. Section 1483 was added to the Revised Judicature Act as a part of the tort reform legislation of 1986 – 1986 P.A. No. 178. As originally enacted, § 1483 limited damages for noneconomic loss to \$225,000 but provided several exceptions, including all cases where a death had occurred. In its original form, § 1483 provided:

“(1) In an action for damages alleging medical malpractice against a person or party specified in section 5838a, damages for noneconomic loss which exceeds \$225,000.00 shall not be awarded unless 1 or more of the following circumstances exist:

- (a) There has been a death.
- (b) There has been an intentional tort.
- (c) A foreign object was wrongfully left in the body of the patient.
- (d) The injury involves the reproductive system of the patient.
- (e) The discovery of the existence of the claim was prevented by the fraudulent conduct of a health care provider.
- (f) A limb or organ of the patient was wrongfully removed.

(g) The patient has lost a vital bodily function.

“(2) In awarding damages in an action alleging medical malpractice, the trier of fact shall itemize damages into economic and noneconomic damages.

“(3) “Noneconomic loss” means damages or loss due to pain, suffering, inconvenience, physical impairment, physical disfigurement, or other noneconomic loss.

“(4) The limitation on noneconomic damages set forth in subsection (1) shall be increased by an amount determined by the state treasurer at the end of each calendar year to reflect the cumulative annual percentage increase in the consumer price index. As used in this subsection, “consumer price index” means the most comprehensive index of consumer prices available for this state from the bureau of labor statistics of the United States department of labor.”

(Emphasis added)

MCL 600.6098, also added by the 1986 legislation, requires the court to set aside any portion of a verdict for noneconomic damages that exceeds the amount of the statutory limitation established in § 1483. That section provides, in subsection (1), that:

“A judge presiding over an action alleging medical malpractice shall review each verdict to determine if the limitation on noneconomic damages provided for in section 1483 applies. If the limitation applies, the court shall set aside any amount of noneconomic damages in excess of the amount specified in section 1483.”

Section 1483 was amended by the medical malpractice tort reform legislation of 1993 – 1993 P.A. No. 78. This amendatory legislation raised the statutory cap on noneconomic damages from \$225,000 to \$280,000, eliminated the previously existing exceptions to the cap, including the exception for cases involving a death, and replaced the prior exceptions with

three more narrowly drawn exceptions, to which a new "hard cap" of \$500,000 was applied.<sup>1</sup> The amendments also clarified that, in each case, the cap is a single cap, limiting the amount of noneconomic damages which may be recovered by all plaintiffs from all defendants. The new limitations are now stated in § 1483(1) as follows:

"(1) In an action for damages alleging medical malpractice by or against a person or party, the total amount of damages for noneconomic loss recoverable by all plaintiffs, resulting from the negligence of all defendants, shall not exceed \$280,000.00 unless, as a result of the negligence of 1 or more of the defendants, 1 or more of the following exceptions apply as determined by the court pursuant to section 6304, in which case damages for non-economic loss shall not exceed \$500,000.00:

- (a) The plaintiff is hemiplegic, paraplegic, or quadriplegic resulting in a total permanent functional loss of 1 or more limbs caused by 1 or more of the following:
  - (i) Injury to the brain.
  - (ii) Injury to the spinal cord.
- (b) The plaintiff has permanently impaired cognitive capacity rendering him or her incapable of making independent, responsible life decisions and permanently incapable of independently performing the activities of normal, daily living.
- (c) There has been permanent loss of or damage to a reproductive organ resulting in the inability to procreate."

The 1993 legislation also added a new provision to MCL 600.6304, which, like § 6098, requires the court to reduce verdicts for noneconomic damages in excess of the applicable limitations provided in § 1483. This new provision, which has also clarified that

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<sup>1</sup>The substance of subsections (2), (3) and (4) of § 1483 was not changed by the 1993 legislation. Thus, § 1483(4) still requires that the statutory limitations of noneconomic damages set forth in subsection (1) be adjusted annually for inflation. Section 6098 was not amended by the 1993 act.

application of the cap is a function for the court, now appears as subsection 6304(5).<sup>2</sup> It provides that:

“In an action alleging medical malpractice, the court shall reduce an award of damages in excess of 1 of the limitations set forth in section 1483 to the amount of the appropriate limitation set forth in section 1483. The jury shall not be advised by the court or by counsel for either party of the limitations set forth in section 1483 or any other provision of section 1483.”

**B. BY ITS PLAIN TERMS, THE STATUTORY LIMITATION OF NONECONOMIC DAMAGES APPLIES TO ALL MEDICAL MALPRACTICE CASES.**

The statutory language of § 1483 is clear and unambiguous. It applies, without limitation or exception, to all actions for damages alleging medical malpractice – “In an action for damages alleging medical malpractice by or against a person or party..” It limits the amount of all noneconomic damages which might otherwise be recovered by the plaintiff or plaintiffs – “the total amount of damages for noneconomic loss recoverable by all plaintiffs, resulting from the negligence of all defendants shall not exceed....” § 1483(1) Consistent with its broad coverage, § 1483 defines “noneconomic loss” expansively to include all “damages or loss due to pain, suffering, inconvenience, physical impairment, physical disfigurement, or other noneconomic loss.” § 1483(3) Under MCL 600.6098 and MCL 600.6304, the court’s duty to apply the cap to reduce excessive awards of noneconomic

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<sup>2</sup>The 1993 legislation added this provision as a new subsection (6) of § 6304. Section 6304 was subsequently amended by the general and product liability tort reform legislation of 1995 – 1995 P.A. Nos. 161 and 249. These amendatory acts renumbered this subsection, but did not change its substantive content.

damages also applies without limitation or exception to any “action alleging medical malpractice.”

Thus, by its clear and unambiguous terms, the statutory cap on noneconomic damages now applies to all cases alleging medical malpractice, including malpractice cases brought under the wrongful death statute.

The conclusion that the statutory caps are applicable in medical malpractice actions brought under MCL 600.2922 is buttressed by the language of § 6304, which now specifically states that its provisions are applicable to wrongful death actions. That section is a part of Chapter 63 of the Revised Judicature Act, pertaining to personal injury verdicts and damages. Chapter 63 was added, in its entirety, by the 1986 tort reform legislation. As noted previously, the 1993 legislation added a new implementing provision in § 6304. That new provision, now subsection 6304(5), like the similar provision in § 6098, requires the court to set aside any portion of a verdict for noneconomic damages that exceeds the amount of the applicable cap provided in § 1483.

Subsection 6304(1) now requires the trier of fact to assess the comparative fault of all parties and non-parties who have contributed to the death or injury in all actions “based on tort or another legal theory seeking damages for personal injury, property damage, or **wrongful death**...” (Emphasis added) Subsection 6304(3) provides, in pertinent part, that “The court shall determine the award of damages to each plaintiff in accordance with the findings under subsection (1), subject to any reduction under subsection (5) ....” Thus, by their own clear terms, § 6304 and its subsection (5), pertaining to application of the statutory cap on noneconomic damages, are applicable to actions for wrongful death.

The language in subsection 6304(1) specifically referring to wrongful death actions was added by 1995 P.A. No. 161, the first of the two 1995 tort reform acts. It should be noted, however, that Chapter 63 was originally made applicable to wrongful death actions by virtue of the definition of "personal injury" in § 6301(b), MCL 600.6301(b), which specifically includes "death" within the definition of that term.<sup>3</sup>

It may be acknowledged that the statutory cap on noneconomic damages did not apply in wrongful death cases prior to the enactment of the 1993 medical malpractice tort reform legislation by virtue of the specific exception, applicable to cases in which a death had resulted, contained within § 1483 as originally enacted. Obviously, the Legislature did not intend for the cap to apply to wrongful death cases when § 1483 was first created in 1986, as evidenced by that specific exception. Because the 1986 tort reforms applied to all tort actions, including those brought under the wrongful death statute, it was necessary to include a specific death exception in the language of § 1483 in order to make it clear that the cap did not apply in wrongful death cases.

By virtue of the 1993 legislation which eliminated the exception for death cases, there is no longer any exception to the statutory cap for cases in which a death has resulted. Thus,

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<sup>3</sup> The evident purpose of the amendment adding the language referring to actions "based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death..." was to make the provisions of § 6304 applicable to causes of action based upon theories other than tort. (Contract claims for injuries resulting from breach of an implied warranty, for example) The same language was added by the 1995 legislation to MCL 600.1629, pertaining to determination of venue, which had been previously limited to actions based on tort. The same language was also added to a number of new sections pertaining to assessment of comparative fault, the elimination of joint and several liability, and the prohibition of noneconomic damages in cases where the plaintiff's comparative fault is found to be greater than the aggregate fault of other responsible persons. See: MCL 600.2956 through MCL 600.2959.

by its clear terms, § 1483 now applies to all medical malpractice cases, including those brought under the wrongful death statute.

**C. THE LEGISLATIVE HISTORY OF THE 1993 AMENDATORY LEGISLATION MANIFESTS A CLEAR LEGISLATIVE INTENT TO APPLY THE STATUTORY LIMITATION OF NONECONOMIC DAMAGES TO WRONGFUL DEATH CASES.**

In light of the clear and unambiguous statutory language previously discussed, it should be unnecessary to consider rules of construction or legislative history.<sup>4</sup> It must be noted, however, that the legislative history of the 1993 legislation reveals a clear legislative intent to eliminate death as an exception to the statutory limitation of noneconomic damages.

To put this issue in proper perspective it is useful to briefly review the history of the 1993 legislation as it relates to the statutory cap on noneconomic damages. The 1993 legislation, 1993 P.A. No. 78, resulted from the enactment of Senate Bill 270 of the Eighty-Seventh Legislature, which was introduced by Senator Dan DeGrow on January 28, 1993. It should be noted, however, that Senate Bill 270 had its roots in earlier legislative discussions; it was a reintroduction of a Bill from the preceding legislative session – Senate Bill 249 of the Eighty-Sixth Legislature – also introduced by Senator DeGrow.

The introduction of Senate Bill 249 in 1991 was prompted by concerns, widely expressed by health care professionals and medical malpractice insurers, that a medical malpractice crisis had continued to exist in Michigan in spite of the 1986 tort reforms. A

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<sup>4</sup> When a statutory provision is found to be ambiguous, courts may look to the legislative history of an act to ascertain the meaning of its provisions. Legislative history relevant for this purpose includes legislative analyses and journals chronicling amendments and legislative debate. *See: In Re Certified Question from the United States Court of Appeals for the Sixth Circuit*, 468 Mich 109, 114-115; 659 NW 2d 597 (2003); *Department of Transportation v Thrasher*, 196 Mich App 320, 323; 493 NW 2d 457 (1992), *aff'd* 446 Mich 61 (1994).

series of public hearings was conducted across the state by the Medical Liability Subcommittee of the Senate Judiciary Committee, and the Bill – a Substitute (S-4) – was subsequently passed by the Senate in the fall of 1991. As passed by the Senate, Senate Bill 249 proposed the removal of all of the exceptions to the statutory cap on noneconomic damages.<sup>5</sup> Senate Bill 249 was not taken up in the House of Representatives, and thus, expired with the *sine die* adjournment of 1992.

As originally introduced in 1993, Senate Bill 270 also proposed the elimination of all of the exceptions to the statutory cap, but provided for an increase in the amount of the cap from \$225,000 to \$250,000.<sup>6</sup> The Bill was passed by the Senate in this form – a Substitute (S-2) – on February 18, 1993. (1993 Senate Journal, pp. 279-280)<sup>7</sup> The House of Representatives subsequently passed the Bill – a Substitute (H-2) – with amendments on April 28, 1993. (1993 House Journal p. 1013)<sup>8</sup> The currently existing exceptions to the statutory cap were embodied in the Bill Substitute (H-2) passed by the House on that date.

It is noteworthy that the House Judiciary Committee reported a Bill Substitute (H-1), which proposed a cap of \$1,000,000 applicable to cases where the alleged malpractice had resulted in death.<sup>9</sup> This Bill Substitute was adopted by the House of Representatives on April

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<sup>5</sup> A copy of the Senate Fiscal Agency Bill Analysis for Senate Bill 249, as passed by the Senate, is attached as Appendix “A.”

<sup>6</sup> A copy of the Senate Fiscal Agency Committee Summary for Senate Bill 270 is attached as Appendix “B.”

<sup>7</sup> Copies of all of the Senate Journal pages pertinent to the passage of Senate Bill 270 are attached as Appendix “C.”

<sup>8</sup> Copies of all of the House Journal pages pertinent to the passage of Senate Bill 270 are attached as Appendix “D.”

<sup>9</sup> The Bill Substitute (H-1) is summarized in the House Legislative Analysis Section report attached hereto as Appendix “E.”

21, 1993, but was immediately superseded by the subsequent adoption of the Substitute (H-2) on the same date. (1993 House Journal pp. 897-899)

The legislative history, including the available legislative analyses and the proceedings reported in the Journals, clearly establishes a legislative intent to eliminate the previously existing exception for cases where the alleged malpractice has resulted in death. It should be noted, in this regard, that an amendment proposing to restore death as an exception to the statutory cap was offered in the Senate by Senators Stabenow and Dillingham, but this proposed amendment was rejected. (1993 Senate Journal, pp. 274-275) Three such amendments were offered in the House to the Substitute (H-2) by Representatives Curtis, Jondahl and Wallace. These amendments were also rejected. (1993 House Journal, pp. 953, 994-995, 1005-1007) Where, as here, the Legislature has considered but rejected certain language, the statute cannot be interpreted to include the language considered and rejected. In Re MCI Telecommunications Complaint, 460 Mich 396, 415; 596 NW 2d 164 (1999)

It is also noteworthy that Senators Kelly and Carl spoke in opposition to the Bill and specifically cited their objections to the removal of death as an exception to the statutory cap. (1993 Senate Journal, pp. 1774-1775) This, also, is persuasive evidence that the elimination of the death exception was intended.

Finally, it is also interesting to note that when the 1995 general tort reform legislation (House Bill 4508 of the Eighty-Eighth Legislature) was debated in the House of Representatives on April 27, 1995, Representative Clack offered an amendment to § 1483 which would have added a fourth exception to the application of the lower cap for cases in which "the individual upon whom the action is based died as a result of the medical

malpractice.” This proposed amendment was defeated by a record roll-call vote.<sup>10</sup> Although this attempt is not directly relevant to discovery of what the prior Legislature intended in 1993, it does suggest a clear understanding by the members of the subsequent Legislature – many of whom were members of the Legislature in 1993 – that the exception for wrongful death cases had been eliminated two years before. Obviously, there would have been no need for this amendment if the caps did not apply in wrongful death cases.

All of these circumstances point irresistibly to the conclusion that the Legislature clearly intended to eliminate death as an exception to the statutory limitation of noneconomic damages. Indeed, this was one of the most important and controversial objectives of the 1993 legislation. In light of this clearly expressed legislative intent, it cannot be concluded that the statutory caps were not intended to apply in wrongful death actions alleging medical malpractice. The Court of Appeals has blithely dismissed this compelling evidence of legislative intent in a footnote with a conclusory statement that “the legislative history sheds no light on this issue.” 256 Mich App at 112, fn. 8 This statement is puzzling, to say the least, in light of this clear evidence that the exception for death cases was eliminated intentionally, in the face of vigorous opposition.

Despite this clear evidence of the Legislature’s intent relating to the specific amendatory legislation at issue, the Court of Appeals has relied upon other, subsequently enacted, statutes which have defined “noneconomic loss” to include loss of society and companionship. Specifically, the court has listed MCL 600.2945, pertaining to product liability actions; MCL 600.2969 and MCL 600.2970, pertaining to damages resulting from

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<sup>10</sup> See 1995 House Journal, pp. 1061 and 1062. Copies of these House Journal pages are attached as Appendix “F.”

computer data failures; and MCL 691.1416(f), pertaining to municipal liability for damage resulting from backup or overflow of sewage disposal systems.

The *Amici Curiae* contend that this reliance has been misplaced. Each of these provisions were enacted by subsequent Legislatures. Their intent with regard to these statutes, whatever it may have been in each case, has no bearing on what the prior Legislatures intended in their enactment of the 1986 and 1993 tort reforms. As the court has correctly noted,<sup>11</sup> the only intent that is relevant in construing a statute is the intent of the Legislature that enacted it. Blank v Department of Corrections, 462 Mich 103, 148-149; 611 NW 2d 530 (2000); Columbia Associates, L.P. v Department of Treasury, 250 Mich App 656, 686 fn. 9; 649 NW 2d 760 (2002)

**D. THE STATUTORY LIMITATION OF NONECONOMIC DAMAGES IN MEDICAL MALPRACTICE CASES DOES NOT CONFLICT WITH THE WRONGFUL DEATH STATUTE.**

The holding of the Court Appeals, that § 1483 does not apply in wrongful death cases, was based largely upon its conclusion that it conflicts with inconsistent provisions of the wrongful death statute. This conclusion was clearly erroneous for a number of reasons.

First, although MCL 600.2922 allows certain enumerated survivors to recover damages for the death of another – a remedy which was not available at common law – it does not create an independent or substantively different cause of action. Section 2922 merely provides statutory authorization for lawsuits seeking damages for tortious conduct resulting in death, and prescribes procedures for the institution of such actions. This was recognized in the case of Hawkins v Regional Medical Laboratories PC, 415 Mich 420; 329 NW 2d 729

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<sup>11</sup> Court of Appeals Opinion, 256 Mich App at 126, fn. 8.

(1982), in which this Court held that the limitation of actions in lawsuits brought under § 2922 is governed by the statutory limitation period applicable to the underlying theory of liability. Thus, in Hawkins, where the action alleged medical malpractice, the period of limitation was established by the statute of limitations applicable to medical malpractice cases.

Similarly, the reported decisions have held that the general venue provisions of the Revised Judicature Act are applicable to actions brought under the wrongful death statute. Huhn v DMI, Inc. (On Remand), 215 Mich App 17; 544 NW 2d 719 (1996); Johnson v Simongton, 184 Mich App 186; 457 NW 2d 129 (1990). And, as noted previously, numerous other provisions of the Revised Judicature Act have been made applicable to wrongful death cases by the tort reform legislation of 1986, 1993, and 1995. Thus, it may be seen that the requirements of the Revised Judicature Act applicable to personal injury actions in general are equally applicable to actions brought pursuant to the wrongful death statute.

In considering this issue, it is useful to note, at the outset, what the wrongful death statute is, and is not. The Court of Appeals has correctly pointed out that actions for wrongful death must be brought pursuant to the wrongful death statute. Its Opinion has emphasized that "There having been no common-law right of recovery in survivors of a person wrongfully killed, the sole source of rights in such a case is the WDA." 256 Mich App at 118. The court has also correctly noted that "The remedy under the death act is exclusive, and the recovery of damages is necessarily limited to those specified by the Legislature and sustained by the proofs." Based upon these principles, the court easily proceeded to the pronouncement that "Thus, plaintiff was statutorily required to proceed with this action for wrongful death damages pursuant to the WDA." 256 Mich App 118-119

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This comes as no surprise because, under the common law, actions did not survive death and there was no cause of action in favor of survivors of a decedent whose death was caused by tortious acts or omissions. Hardy v Maxheimer, 429 Mich 422, 433-438; 417 NW 2d 299 (1987). As our Constitution explains, "The common law and the statute laws now in force, not repugnant to this constitution, shall remain in force until they expire by their own limitations, or are changed, amended or repealed." Const 1963, art. 3, § 7 Thus, without the wrongful death statute, the common law would remain, and survivors would have no cause of action. Their cause of action has been created, and the types of damages which may be awarded in these cases have been defined, by the wrongful death statute.

It should also be noted, however, that although frequently referred to as the "Wrongful Death Act," or simply "the Death Act," the wrongful death statute is no longer a separate and distinct act. The cause of action for wrongful death was originally created by 1848 P.A. No. 38. This "Death Act" remained as a separate and distinct act until 1961, when it was repealed by the new Revised Judicature Act, which incorporated its provisions into MCL 600.2921 and MCL 600.2922, where they are found today. Thus, the "Wrongful Death Act" referred to as "the WDA" throughout the Court of Appeals Opinion, is not really a separate act at all; it is merely another section of the Revised Judicature Act – a section which must be read *in pari materia* with the others sections at issue.<sup>12</sup>

The Court of Appeals has stated that "the WDA addresses an award of damages and directs a court or jury in "every action" to award damages as the court or jury shall consider fair and equitable." 256 Mich App at 119 (Emphasis in the Court's Opinion) Based upon this

<sup>12</sup> Because § 2922 and § 1483 are both part of the Revised Judicature Act, there is no issue of improper amendment by reference or implication in violation of Const 1963, art. 4, § 25.

assumed “direction” to award damages, the court has jumped to the conclusion that “standing alone, the WDA mandates recovery in any amount, limited only by the requirement that the amount be fair and equitable, for noneconomic losses, including those for loss of society and companionship.” 256 Mich App at 119

This logic is flawed for two reasons. First, the statute does not “direct” an award of damages in “every action” under the wrongful death statute, as the court has indicated. The reference to “every action” makes it clear that subsection 2922(6) applies in every wrongful death case, but the statute goes on to say that the court or jury may award damages. Thus, this provision does not depart from established precedents recognizing that the jury may properly choose to award no damages if damages are not sufficiently proven. It is well settled, of course, that to recover damages in a tort action, the plaintiff must prove breach of duty, damages resulting therefrom, and proximate causation. This was recognized in the case of Barber v Kolowich, 282 Mich 143, 147; 275 NW 797 (1937), where this Court emphasized that there can be no liability for breach of fiduciary duty when no loss has resulted. *See also*: Alston v Tye, 67 Mich App 138; 240 NW 2d 472 (1976) (Remanded for entry of judgment of no cause of action where jury returned verdict for plaintiff, but awarded no damages); Riggs v Szymanski, 62 Mich App 610; 233 NW 2d 670 (1975) (Trial court order granting new trial reversed, and jury verdict reinstated, where jury found defendant negligent, but awarded no damages)

Second, even if subsection 2922(6) did “direct” an award of damages, it does not mandate “recovery” of the amount awarded by the court or jury, “limited only by the requirement that the amount be fair and equitable,” as the Court of Appeals has maintained. This pronouncement overlooks the substantial difference between an award of damages made

by a court or jury sitting as trier of fact and the actual “recovery” embodied in the court’s judgment. It also overlooks the very different roles and responsibilities of the court and the jury. An “award” rendered by a jury is clearly very different from the judgment subsequently entered by the court.

The court’s judgment starts with the award of damages, but incorporates several adjustments. Damages must be apportioned in accordance with the trier of fact’s findings on comparative fault. MCL 600.6304(1), (2) and (3); MCL 600.6306(3). Where appropriate, reductions must be made for amounts paid by collateral sources. MCL 600.6303; MCL 600.6306(1)(a) and (c). Future damages must be reduced to present value. MCL 600.6306(1)(c), (d), and (e). All of these adjustments, which reduce the damages awarded by the trier of fact, must be made in wrongful death actions. They are all required under Chapter 63 of the Revised Judicature Act which, as noted previously, clearly applies to actions for wrongful death. Application of the cap on noneconomic damages is just one of the several adjustments which must be made, when appropriate, in all medical malpractice cases, whether brought by a living plaintiff, or by a Personal Representative under § 2922.

These adjustments do not diminish the jury’s right or obligation to determine the amount of damages. As the Court of Appeals correctly noted in the case of Zdrojewski v Murphy, 254 Mich 50; 657 NW 2d 721 (2002), application of the cap does not limit the jury’s right to determine damages, and thus, does not constitute a denial of the constitutional right to trial by jury. The jurors, who may not be informed of the cap, are free to determine their award of damages as they see fit. Recovery of the amount awarded is a different matter, being subject to the various statutorily required adjustments previously discussed, including application of the cap on noneconomic damages when necessary. This rationale applies with

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equal force here. Just as the application of the cap does not limit the jury's freedom to award damages, and thus, does not infringe the right to jury trial, it does not diminish the ability of the court or jury to award damages "as the court or jury shall consider fair and equitable" under § 2922 (6).

Thus, it may be seen that the wrongful death statute does not conflict with § 1483, as the Court of Appeals has found. The "wrongful death act" now embodied in § 2922 of the Revised Judicature Act merely provides a cause of action for wrongful death in favor of the decedent's survivors, and generally defines the elements of damages which may be recovered in a such an action. Although a wrongful death action must be brought under § 2922, it remains subject to all of the various procedural requirements and substantive limitations which apply to civil causes of action in general under other applicable provisions of the Revised Judicature Act; § 2922 contains no pronouncement to the contrary. The statutory limitation of noneconomic damages in medical malpractice cases must be applied pursuant to §§ 1483, 6098, and 6304, in any action alleging medical malpractice, whether brought by a living plaintiff or pursuant to § 2922. The statutory limitation of noneconomic damages does not diminish the ability of the jury, or the court sitting as trier of fact, to render an appropriate award of damages based upon the proofs presented; it merely limits the plaintiff's ability to recover the full amount awarded in cases where the cause of action is based upon medical malpractice. Thus, it is evident that these statutes do not conflict. They can be read together without difficulty, and easily harmonized.

This being the case, it was not necessary for the Legislature to enact corresponding amendments to § 2922 when it eliminated the exception for death cases from § 1483 in 1993. This, again, is particularly true in light of the fact that these sections are part of the same act –

the Revised Judicature Act. The “WDA” as the Court of Appeals calls it, is not a separate and distinct act, as the court’s decision repeatedly suggests.

Moreover, even if it were found that there was a conflict between § 2922 and § 1483, the more specific, and recent, provisions of § 1483 would control. This also, has been misunderstood by the Court of Appeals in this case. The Court of Appeals has recognized the well-established rule that, in the event of a conflict, the more specific statute governs. However, having done so, the court first opined that “At first glance it appears that both statutes are equally specific to different subject matters,” but ultimately concluded that “in the context of the specific types of damages recoverable under each statute, we find the WDA to be superior because it more specifically denotes the type of damages to be considered by the trier of fact.” 256 Mich App at 128 This conclusion is puzzling because the wrongful death statute lists all of the types of damages, both economic and noneconomic, which may be recovered for wrongful death, while § 1483 is concerned only with noneconomic damages. Section 1483 is also more narrowly focused because it applies only to medical malpractice cases, whereas § 2922 addresses all wrongful death actions, regardless of the underlying theory of liability.

Thus, between the two statutes, § 1483 is clearly the more specific. It is also the most recent, and this also gives § 1483 priority. Malcolm v City of East Detroit, 437 Mich 132, 139; 468 NW 2d 479 (1991); Travelers Insurance v U-Haul of Michigan, Inc., 235 Mich App 273, 284-285; 597 NW 2d 235 (1999) As noted previously, § 2922 was derived from the old Wrongful Death Act, first enacted in 1848. With the exception of minor amendments made in the year 2000 to conform the statute to the newly adopt Estates and Protected Individuals

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Code, § 2922 was put into its current form by 1985 P.A. No. 93. The first tort reform act, which created § 1483, was enacted a year later in 1986.

**E. THE COURT OF APPEALS HAS IMPROPERLY APPLIED THE DOCTRINE OF *EJUSDEM GENERIS* IN THIS CASE.**

The Court of Appeals has also relied heavily upon its conclusion that the definition of “noneconomic loss” appearing in subsection 1483(3) does not include damages recoverable in wrongful death actions. This conclusion, based upon a seriously flawed application of the doctrine of *ejusdem generis*, does not support the court’s holding that § 1483 does not apply in wrongful death cases.

Based solely upon the statute’s definition of “noneconomic loss,” the Court of Appeals has opined that “there is express language contained in § 1483 that indicates that it does not apply in wrongful-death actions.” 256 Mich App at 122 Specifically, the court noted that the statute’s definition of “noneconomic loss” does not list loss of society or companionship among the losses listed therein, and thus, has reasoned that whether these losses are included depends upon whether they constitute “other noneconomic loss.” The court then utilized the doctrine of *ejusdem generis*, a rule of statutory construction, to conclude that the statute’s reference to “other noneconomic loss” does not include loss of society or companionship because the types of loss specified – damages or loss due to pain, suffering, inconvenience, physical impairment, or physical disfigurement – “clearly relate to damages sustained by an individual surviving plaintiff rather than damages sustained by next of kin in a wrongful-death action who are represented by the personal representative.” 256 Mich App 124

Based upon this conclusion, the court proceeded to opine that the noneconomic losses enumerated in § 1483(3) are not of the same kind, class, character, or nature as those

associated with a wrongful death action, and thus, under the doctrine of *ejusdem generis*, “other noneconomic loss,” as used in that provision does not refer to noneconomic losses related to wrongful death actions:

“We can only conclude that the examples of noneconomic losses specifically enumerated in § 1483 are not of the same kind class, character, or nature as those associated with a wrongful death action. Therefore, under the doctrine of *ejusdem generis*, “other noneconomic loss,” as used in § 1483(3) does not refer to noneconomic losses related to wrongful-death actions.”

256 Mich App at 125

From this, the court progressed to the conclusion that, “Taking into consideration only the language of the statutes, we conclude that the Legislature intended the WDA to exclusively govern all areas of a wrongful-death action as expressed in its language, including the award of noneconomic damages, and that the Legislature did not intend the damages cap to limit those damages in a wrongful-death, medical-malpractice action.” 256 Mich App 125-126

This application of *ejusdem generis* was inappropriate for a number of reasons. First, it was peculiar, and inconsistent with this Court’s pronouncements on statutory construction, to resort to statutory construction to reach the conclusion that the statutory language unambiguously expressed the Legislature’s intent that the cap on noneconomic damages would not be applied in wrongful death cases. If the Legislature’s expression of this intent was clearly and unambiguously stated, it would not have been necessary, or appropriate, to resort to statutory construction.

Second, the essential premise underlying the court’s application of the *ejusdem generis* doctrine is seriously flawed. That premise – “that the examples of noneconomic losses specifically enumerated in § 1483 are not of the same kind, class, character, or nature

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as those associated with a wrongful death action” – overlooks the simple fact that some of the damages listed in that definition, *i.e.*, “pain” and “suffering,” **are** compensable in wrongful death cases to the extent that the statute allows recovery of “reasonable compensation for the pain and suffering, while conscious, undergone by the deceased person during the period intervening between the time of the injury and death” MCL 600.2922(6) Thus, the elements of noneconomic damages listed in § 1483(3) are **not** limited to “damages sustained by an individual surviving plaintiff rather than damages sustained by next of kin in a wrongful-death action,” as the court has supposed.

Additionally, as the Defendants have pointed out, recovery of damages for loss of society or companionship is not limited to wrongful death actions.<sup>13</sup> Loss of society and companionship are commonly elements of damages for loss of consortium in medical malpractice cases pursued by living plaintiffs. As the Defendants have also pointed out, the court’s interpretation of § 1483(3) as including only damages suffered by an “individual surviving plaintiff” would seem to preclude application of the cap to derivative claims by relatives of a surviving plaintiff. This, clearly, was never intended. The court’s analysis is seriously flawed for this reason as well.

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<sup>13</sup> This was probably the reason for the specific inclusion of loss of society and companionship in the definitions of noneconomic loss subsequently included in MCL 600.2669, MCL 600.2670, and MCL 691.1416. MCL 600.2969 and MCL 600.2970, pertaining to suits for damages resulting from computer data failures, were added to the Revised Judicature Act by 1999 P.A. Nos. 239 and 240, and later repealed by their own sunset provisions on January 1, 2003. It should be noted, however, that the immunity from noneconomic damages provided so briefly by these provisions was specifically made inapplicable to wrongful death cases. *See*: Former MCL 600.2969(3) and former MCL 600.2970(3). Similarly, the immunity from liability for noneconomic damages for sewer backups or overflows provided under MCL 691.1418 (to which the definition of “noneconomic damages” in § 1416 applies) has also been specifically made inapplicable to cases involving death. *See*: MCL 691.1418(2)

Third, and perhaps most importantly, it must be remembered that the doctrine of *ejusdem generis* is merely a tool of construction – one of many which may be used to determine the Legislature’s intent when that intent has not been clearly expressed. It should never be applied to defeat or limit a statute’s purpose where the language used discloses no purpose of limiting the general term in question. In Re Mosby, 360 Mich 186, 192; 103 NW 2d 462 (1960) In § 1483(3), where the listed elements of noneconomic loss include damages which may be recovered in any personal injury action, including those brought under the wrongful death statute, the language used clearly discloses no intent to limit the meaning of the general catch-all “other noneconomic loss.”

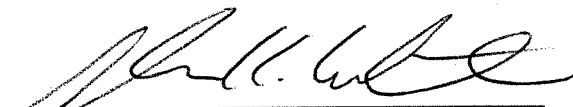
Moreover, the doctrine of *ejusdem generis* is, at best, an imperfect indicator of legislative intent, and thus, should never be used as a means for reaching a construction contrary to a more reliably established purpose. Accordingly, if the court was going to employ the doctrine of *ejusdem generis*, it should also have given due consideration to other more reliable indicators of legislative intent, including most notably, the legislative history of the statute. As noted previously, the legislative history provides compelling support for the conclusion that the Legislature did intend to apply the cap on noneconomic damages to wrongful death cases when it amended § 1483 to eliminate the original exception for death cases in 1993. The Court of Appeals clearly erred in disregarding this far more persuasive evidence of legislative intent in favor of its contrived and tortured application of *ejusdem generis*.

## **RELIEF REQUESTED**

WHEREFORE, *Amici Curiae* ProNational Insurance Company and Michigan Health and Hospital Association respectfully request that the erroneous decision of the Court of Appeals be reversed, and that this Honorable Court hold that the statutory cap on noneconomic damages provided under MCL 600.1483 applies in all actions asserting claims of medical malpractice, including those brought pursuant to the wrongful death statute.

Respectfully submitted,

FRASER TREBILCOCK DAVIS & DUNLAP, P.C.  
Attorneys for *Amici Curiae* ProNational  
Insurance Company and Michigan Health  
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Dated: January 16, 2004

# **EXHIBIT A**

**SFA**

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

(517) 373-5383

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ate Bill 248 (Substitute S-3 as passed by the Senate)

ate Bill 249 (Substitute S-4 as passed by the Senate)

sors: Senator John J.H. Schwarz, M.D. (Senate Bill 248)

Senator Dan L. DeGrow (Senate Bill 249)

Committee: Judiciary

Completed: 1-21-92

**TIONALE**

1986, the Michigan Legislature passed a package of bills addressing the tort system. Among the measures taken in the area of medical malpractice litigation were the enactment of a cap on noneconomic, or "pain and suffering", damages, the establishment of qualifications for expert witnesses, revisions to statute of limitations for those under 18 years of age, and the creation of a medical liability mediation process. Despite those medical liability amendments, however, Michigan continues to experience what many have termed a medical malpractice "crisis".

The frequency of medical malpractice claims and the size of the resultant awards and settlements reportedly have increased rapidly in recent years. According to a Michigan State Medical Society (MSMS) review of data from the State's physician-owned insurance companies, the number of suits filed rose significantly from 1989 to 1990. Michigan Physicians Mutual Liability Company (MPMLC) saw a 17% increase in case filings, from 811 to 950, while Physicians Insurance Company of Michigan (PICOM) experienced a 12% increase. Moreover, the two insurers' average pay-out for jury awards and settlements has escalated: MPMLC reportedly paid an average of \$85,800 in 1990, a 1% increase from 1985's average of \$81,100, while PICOM paid an average of \$73,000 in 1990 compared to \$39,000 in 1985, an increase of 87%. In addition, it has been reported that in 1986, the average award paid by the leading insurance writer for Michigan hospitals increased 173%, from \$51,000 in 1986 to over \$140,000 in 1990.

In addition, rates paid for medical liability

coverage by Michigan's health professionals and health facilities evidently remain among the highest in the nation. The MSMS reports that Michigan health professionals pay three to 11 times as much for the same, or even less, coverage as is paid in other Great Lakes states. According to another estimate, Michigan physicians and hospitals pay about \$500 million per year for medical liability coverage and that amount will double in the next seven years. The primary reason for the divergence in rates and available coverage, according to those who advocate further reform, is the states' tort system. For example, the other Great Lakes states reportedly have award caps that are more strict than those in Michigan, so awards and settlements generally are lower elsewhere, resulting in fewer claims and smaller insurance premiums.

Many believe that the 1986 medical malpractice litigation revisions were limited and fell far short of providing a solution to Michigan's medical liability situation. In order to increase access to, and decrease the cost of, quality health care in Michigan, they contend, malpractice insurance premiums and frequency of claims must be reduced. While most would agree that those injured by medical malpractice should be provided for, proponents of further reform argue that Michigan's current medical liability tort system makes pursuing an alleged malpractice claim, whether valid or not, too attractive for patients and too profitable for the legal profession. In order to lower malpractice insurance rates, provide greater access to health care in Michigan, and reduce the cost of health care, some people believe that a more structured pretrial medical malpractice determination

process should be adopted; exceptions to the cap on noneconomic damages should be eliminated; attorneys' contingency fees should be reduced; medical experts' qualifications should be heightened; and the statute of limitations for minors should be revised.

## CONTENT

Senate Bills 248 (S-3) and 249 (S-4) would create the "Michigan Medical Liability Determination Act" and amend the Revised Judicature Act (RJA), respectively, to provide for an alternative mechanism for the resolution of medical malpractice disputes and to implement certain revisions in medical liability determination procedures.

Senate Bill 248 (S-3) would establish the Medical Liability Determination Program as an autonomous agency in the Department of Commerce and do all of the following:

- Provide for the appointment of a Commissioner of the Program and specify the Commissioner's responsibilities, including the selection of three-member panels to hear medical malpractice actions.
- Establish application criteria for membership on medical liability determination panels.
- Outline panel procedures regarding medical experts, hearings, and findings.
- Require a court to order certain costs and fees to be paid depending on the amount of settlement or judgment in a medical malpractice action brought in court after the rejection of an offer of settlement resulting from a panel's findings.
- Allow all of the parties to a claim to waive proceedings before a medical liability determination panel.
- Specify that a person who filed a medical malpractice action would waive his or her physician-patient privilege with respect to both the treating physician and previous and subsequent health care providers.

Senate Bill 249 (S-4) would do all of the

following:

- Limit an attorney's contingency fee in a claim or action alleging a personal injury or wrongful death.
- Remove the exceptions to the RJA's limitation on noneconomic damages in medical malpractice awards, and increase that cap from \$225,000 to \$250,000.
- Revise the RJA's regulations regarding the use of an expert witness in a medical malpractice claim.
- Require a 180-day notice before a medical malpractice action was commenced, and revise requirements for filing an affidavit.
- Revise the statute of limitations (SOL) for certain medical malpractice claims.
- Make other provisions pertaining to: burden of proof; waiver of a plaintiff's physician-patient privilege; and interest on judgments.
- Repeal Chapter 49 of the RJA, which requires participation in a pretrial mediation procedure for medical malpractice actions and outlines that procedure.

The bills are tie-barred to each other and to Senate Bills 413 and 414, which would allow insurers and Blue Cross and Blue Shield of Michigan to offer a basic health policy or certificate, as well as to Senate Bills 418 and 419, which would require the enrollment of all eligible children in the Michigan Caring Program.

### Senate Bill 248 (S-3)

#### Program and Commissioner

The Medical Liability Determination Program would be an autonomous agency in the Department of Commerce and would exercise its duties and powers independently of the Department, except for budget, procurement, and housekeeping functions. The Governor would have to appoint a Commissioner with the advice and consent of the Senate. The Commissioner would head the Program and would have to do all of the following:

- For the bill's purposes, divide the State into five regions, including one that consisted of the major part of the Upper Peninsula.
- For each region, establish three pools of candidates for membership on medical liability determination panels. One pool would have to consist of attorney candidates, one of health professional candidates, and one of public member candidates. Hospital administrators would have to be included among the health professional candidates.
- Appoint a panel to hear a medical malpractice action of which the Commissioner was notified under the RJA. The panel would have to consist of one attorney member, one health professional member, and one public member.

Within 15 days of receiving notification of a person's intent to commence an action against a health professional or health facility, which Senate Bill 249 (S-4) would require, the Commissioner would have to select panel members by blind draw from the pools of candidates for that region. The Commissioner would have to require the plaintiff to give the defendant a copy of the notice required under that bill. Both parties would have to give each other and the Program a copy of the affidavit of merit required under that bill. Both parties also would have to give the panel copies of pertinent medical records. Parties would have to provide the notice, affidavit, and medical records within 30 days after the Commissioner selected a panel. The Commissioner would have to charge a filing fee equal to the fee for filing a civil action in circuit court for the notice required under Senate Bill 249 (S-4).

The Legislature annually would have to fix the per diem compensation for Program panel members and of medical experts who were retained by the panels. The Department of Commerce would have to reimburse panel members' and medical experts' expenses incurred in the performance of official duties pursuant to the Department of Management and Budget's standardized travel regulations. The Department of Commerce also would have to furnish to the Program administrative services; would have charge of the Program's offices, records, and accounts; and would have to

provide secretarial and other staff necessary to allow the Program to exercise properly its powers and duties. The Department of Commerce would have to promulgate rules to implement the Program, including rules of practice and procedure for panels.

#### Medical Liability Determination Panels

The Department of Commerce would have to develop application forms for panel membership. The forms would have to be designed to identify potential biases and conflicts of interest among applicants, and include a disclosure statement and an oath to be signed by applicants. The Program would have to conduct an initial screening of each candidate for placement into one of the candidate pools. Once an applicant was placed into a candidate pool, he or she would be eligible for appointment to a panel for three years after the date of application.

An applicant for attorney membership on a panel would have to comply with all of the following:

- The applicant would have to be licensed as an attorney in Michigan, and have been engaged in the active practice of law for at least the five years immediately preceding the application date. Active practice would consist of at least an average of 25 hours per week of active client representation or a combination of knowledge and experience acceptable to the Program.
- The applicant could not have devoted more than 50% of his or her practice to medical malpractice during the immediately preceding two years. If an applicant had devoted more than 20% of his or her practice to medical malpractice claims during that time, no more than 75% of those claims could have involved exclusive representation of either defendants or plaintiffs.
- The applicant could not have been disbarred in any state, have been disciplined by a state licensing body for a breach of professional ethics, or have been convicted of a crime involving substance abuse.
- The applicant could not have a family member, living in the same household as or financially dependent upon the

applicant, who was a health professional, a graduate of a medical or other health professional school, or employed by or professionally associated with a health facility or agency, private medical practice, or the insurance industry.

An applicant for health professional membership on a panel would have to comply with all of the following:

- The applicant would have to be a licensed or registered health professional, and if the applicant were a specialist, be certified as such under State law or by a national professional organization.
- The applicant would have to be recognized by peers as a competent practitioner, as evidenced by membership in a State or local professional association or on a hospital medical staff.
- The applicant could not have had his or her health professional license or registration revoked or suspended or have been placed on probation, or convicted of a crime involving substance abuse, dishonesty, or a breach of trust.
- The applicant would have to have been engaged in the active clinical practice of his or her profession or specialty for at least the immediately preceding five years. Active practice would consist of a minimum average of 25 hours per week of patient care or a combination of knowledge and experience acceptable to the Program.
- If retired, the applicant could not have been retired for more than the immediately preceding two years.
- The applicant could not have a family member, living in the same household as or financially dependent upon the applicant, who was an attorney, a graduate of law school, or employed by or professionally associated with the insurance industry.
- If the applicant were employed by, under contract to, or admitted to practice in a hospital, the hospital would have to be accredited by a national accrediting body.

An applicant for public membership on a panel would have to meet all of the following:

- The applicant would have to be a resident

of Michigan.

- The applicant would have to have experience in decision-making or problem-solving in an organization as an employee, member, or participant.
- The applicant could not have been convicted of a crime involving substance abuse, dishonesty, or a breach of trust.
- The applicant could not be, or have a family member living in the same household or financially dependent upon the applicant who was, an attorney, a health professional, a graduate of law or medical school or other health professional school, or employed by or professionally associated with a law firm, health facility or agency, private health care practice, or the insurance industry.

#### Panel Procedures

General Procedures A panel's chairperson would have to convene the panel within 15 days after its selection. At the initial meeting, the parties would have to appear before the panel for a conference to evaluate the claim, identify unresolved issues, and schedule panel proceedings. All parties to the claim would have to be given full access to all materials submitted to and reviewed by the panel. The panel could determine the extent of discovery for purposes of understanding the case, but could not allow discovery of a defendant's professional liability insurance coverage.

Information obtained by a panel in the performance of its duties, records of its proceedings, and its written findings would be exempt from the Freedom of Information Act. Panel meetings would not be open to the public or subject to the Open Meetings Act or the Administrative Procedures Act. A panel member would not be civilly liable for the panel's official actions.

Medical Experts A panel would have to retain a neutral medical expert to review medical records and give the panel a detailed written expert opinion on the claim. The expert would have to meet requirements proposed in Senate Bill 249 (S-4) for expert witnesses in a medical malpractice action. Each party could retain, at its own expense, a medical expert to review medical records and render a written opinion to the panel. A party's medical expert also would

have to meet qualifications proposed in Senate Bill 249 (S-4). An expert retained by the panel could not vote as a panel member, but the panel could determine the extent of his or her participation in the proceedings beyond rendering an expert opinion.

**Hearings.** A panel would have to conduct a hearing at which the parties could appear and present their cases. The parties could not call witnesses or present evidence, but the panel could require the attendance of witnesses for questioning by it and the submission of any additional information. Before the hearing was held, each party would have to give the panel a written summary of its case, including the legal and detailed factual basis of a party's claim or defense. A panel could not make a record of a hearing, but a party to the case could record the hearing at his or her own expense.

**Findings.** Within 145 days after the Commissioner first received notice of a person's intent to commence a medical malpractice action, a panel would have to make and deliver to the parties detailed written findings on whether each defendant failed to provide the recognized standard of care, the percentage of negligence attributable to each party, whether the defendant's actions or omissions were the proximate cause of the plaintiff's injury, and the amount of damages to be awarded to the plaintiff.

A party would have to accept or reject each finding of the panel, in writing, within 180 days after the Commissioner first received notice of a person's intent to commence an action. A party would have to file the acceptance or rejection with the panel; a party who failed to do so would be presumed to have rejected that finding. A party would not be bound by its acceptance or rejection of a finding, unless all parties accepted the finding. If the parties agreed on one or more findings, they could stipulate that they would proceed in a civil action only on the findings on which they disagreed. A panel's finding would be admissible in evidence in a subsequent civil action on the claim. The Program would have to retain written copies of a panel's findings, but could not retain copies of medical records and other information reviewed by a panel.

If a settlement were reached as a result of a

panel's findings, the parties would have to report the settlement to the panel, which would have to transmit that information to the Insurance Commissioner.

**Waiver.**

If all parties to a claim agreed in writing, they could waive a panel's proceedings and pursue the claim under the RJA. The parties would have to file a copy of the waiver agreement with the Commissioner.

**Settlement or Judgment.**

If a written offer of settlement, resulting from a panel's findings, were made by a defendant and the offer were rejected by the plaintiff and the plaintiff later settled a civil action or won a judgment that was at least 20% less than the rejected offer, the court would have to award to the defendant reasonable attorney fees and the costs incurred by the defendant, by assessing the costs and fees against the plaintiff. If an offer of settlement resulting from a panel's findings were rejected and the settlement or judgment from a subsequent civil action were 120% or more of the rejected offer, the court would have to award to the plaintiff reasonable attorney fees and costs, by assessing them against the defendant. (If a plaintiff did not accept a written offer of settlement, resulting from a panel's finding, within 21 days of the offer or within the 180-day period after the Commissioner first received notice, the offer would be considered rejected.)

**Physician-Patient Privilege**

A person who filed with the Commissioner notice of intent to commence a medical malpractice action would waive, for purposes of that action, his or her physician-patient privilege with respect both to persons involved in the acts, transactions, events, or occurrences that were the basis for the action and to those who provided care or treatment to the claimant either before or after those acts, transactions, events, or occurrences.

A person who was the subject of a notice filed with the Commissioner or that person's attorney could communicate with others in order to obtain all information relevant to the subject matter of the claim or to prepare a defense. A

person who disclosed otherwise privileged information to a person who was the subject of a notice filed with the Commissioner, or to that person's attorney, would not be in violation of a physician-patient privilege or any other similar duty or obligation created by law and owed to the claimant.

#### Senate Bill 249 (S-4)

##### Contingency Fees

A contingency fee agreement made with a client by an attorney would have to be in writing and be executed at the time the client retained the attorney for the claim or action to which the agreement applied. Failure to comply with this requirement would bar an attorney from collecting a fee that was larger than the minimum contingency fee allowed under the bill. Other provisions of the contingency agreement would remain enforceable, however. An attorney would have to include his or her usual and customary hourly rate of compensation in a contingency fee agreement and provide a copy of the agreement to the client.

In an action filed under the RJA for personal injury or wrongful death based on another person's conduct, if an attorney entered into a contingency fee agreement with his or her client and a money judgment were awarded or the claim or action were settled, the attorney's fee could not exceed: 40% of the first \$5,000 of the award; 35% of an amount over \$5,000, but less than \$25,000; 25% of an amount of \$25,000 or more, but less than \$250,000; 20% of an amount of \$250,000 or more, but less than \$500,000; and 10% of an amount of \$500,000 or more. As an alternative, a contingency fee could be not over 33-1/3% of the first \$250,000 recovered; no more than 20% of an amount over \$250,000, but less than \$500,000; and no more than 10% of an amount over \$500,000.

Contingency fees would have to be calculated on the net sum of the recovery after deducting from the recovery the properly chargeable disbursements. Costs taxed by the court would be part of the amount of the money judgment. In the case of a recovery payable in installments, the fee would have to be computed using the present value of future payments. An attorney who entered into a contingency fee agreement that violated the bill's limits would be prohibited

from recovering fees in excess of the attorney's reasonable actual fees based on his or her usual and customary hourly rate, up to the minimum contingency fee allowed under the bill. Other provisions of the agreement would remain enforceable.

##### Award Cap

Under the RJA, damages for noneconomic loss that result from a medical malpractice claim are limited to \$225,000, except under certain circumstances. The bill would remove those exceptions, which include: a death; an injury involving the patient's reproductive system; the loss of a vital bodily function; an intentional tort; and circumstances under which a foreign object was left in a patient's body, a health care provider's fraudulent conduct prevented the discovery of a claim, or a patient's limb or organ was wrongfully removed.

"Noneconomic loss" means "damages or loss due to pain, suffering, inconvenience, physical impairment, physical disfigurement, or other noneconomic loss". The RJA's noneconomic loss limit must be "increased" annually by an amount determined by the State Treasurer to reflect the cumulative annual percentage "increase" in the consumer price index (CPI). The bill provides, instead, that the State Treasurer would have to "adjust" the noneconomic loss limit to reflect the "change" in the CPI.

##### Expert Witnesses

In an action alleging medical malpractice, the RJA prohibits a person from giving expert testimony on the appropriate standard of care, if the defendant is a specialist, unless the expert witness is a "physician licensed to practice medicine or osteopathic medicine and surgery or a dentist licensed to practice dentistry" in Michigan or another state and is a specialist in the same or a related, relevant area as the defendant. An expert witness also must devote, or have devoted at the time of the occurrence in question, a "substantial portion" of his or her professional time to clinical practice or the instruction of students in the same or a related specialty at an accredited medical, osteopathic, or dental school.

The bill, instead, would require that an expert witness be a licensed "health professional" in

Michigan or another state. If the defendant were a specialist, the expert witness still would have to specialize in the same or a related, relevant area at the time of the occurrence. During the year immediately preceding the date of the occurrence in question, the expert witness would have to have devoted at least 80% of his or her professional time to either or both of the following:

- The active clinical practice of the same health profession in which the defendant was licensed or, if the defendant were a specialist, active clinical practice in that specialty or a related, relevant area.
- The instruction of students in an accredited health professional school in the same profession in which the defendant was licensed or, if the defendant were a specialist, in an accredited health professional school in the same specialty or a related, relevant area.

#### Affidavit and Notice Requirements

In a medical malpractice action, the RJA requires that a complaint be accompanied either by security for costs or by an affidavit. The security may take the form of a bond with surety or any other equivalent security approved by the court, including cash in an escrow account, for costs in an amount of \$2,000. An affidavit may be filed by the plaintiff or the plaintiff's attorney and must attest that the plaintiff or attorney has obtained a written opinion from a licensed physician, dentist, or other appropriate licensed health care provider that the claim alleged is meritorious. The bill, instead, would require an affidavit, signed by a health professional who met the bill's expert witness requirements, to accompany the complaint. The affidavit would have to certify that the health professional reviewed all medical records that were relevant to the plaintiff's complaint and include a statement of each of the following:

- The applicable standard of care.
- The health professional's opinion that the applicable standard of care was breached by the defendant or defendants.
- The actions that should have been taken or omitted by the defendant or defendants in order to have complied with

the applicable standard of care. The RJA requires a medical malpractice defendant to file an answer to a complaint within 21 days after a plaintiff's financial security or affidavit is filed and to furnish security for costs or file an affidavit within 91 days. The bill, instead, would require a defendant to file an affidavit of meritorious defense, signed by a health professional who met the bill's expert witness requirements, within 21 days after the plaintiff's affidavit was filed. An affidavit of meritorious defense would have to certify that the health professional reviewed all medical records that were relevant to the plaintiff's complaint and include a statement of the applicable standard of care as well as the health professional's opinion that the applicable standard of care was not breached by the defendant, that there were one or more meritorious defenses to the claims in the complaint, or both.

A person could not commence a medical malpractice action unless he or she first gave the health professional or health facility subject to the claim notice at least 180 days before commencing the action, and at least 180 days before the claim would be barred by the expiration of the appropriate period of limitation. (The bill, however, would allow the court to toll (suspend) the period of limitations for up to 180 days upon the motion of a party for good cause shown due to unforeseen circumstances, if notice had not been given 180 days or more before the claim would be barred.) A person who gave such notice also would have to file the notice with the Medical Liability Determination Program Commissioner at the same time as notice was given to the defendant. The notice would not have to be in any particular form, but would have to identify the legal basis for the claim, the type of loss sustained, and the specific nature of the injuries. The notice would have to be accompanied by security for costs in the amount of \$2,000, or an affidavit signed by the claimant or the claimant's attorney, attesting that the claimant or attorney had obtained a written opinion from an appropriate health professional that the claim was meritorious.

Within 90 days after receiving the notice, the health professional or health facility subject to the claim would have to furnish to the claimant

security for costs or an affidavit of merit. Security would be the same as that required for the claimant; an affidavit would have to be signed by the health professional or a representative of the health facility, or an attorney, and attest that the professional, facility, or attorney had obtained a written opinion from an appropriate health professional that there was a meritorious defense to the claim.

#### Statute of Limitations

The RJA provides that an action involving a medical malpractice claim may be commenced at any time within the applicable period prescribed by the Act, or within six months after the plaintiff discovers, or should have discovered, the claim's existence, whichever is later. No claim, however, may be commenced later than six years after the date of the act or omission that is the basis for the claim, unless discovery of the claim was prevented by a health care provider's fraudulent conduct, a foreign object was left in the patient's body, or the injury involved the reproductive system. The bill would allow a claim to be commenced later than six years after the date of the act or omission only if discovery of the claim's existence were prevented by a health care provider's fraudulent conduct.

Under the RJA, if a person is under 18 years old at the time he or she is first entitled to bring a court action, the SOL applicable to his or her claim is suspended until one year after the disability of infancy is removed. The RJA specifies, however, that if a medical malpractice claim accrues to a person who is 13 years old or younger, an action based on the claim must be commenced on or before his or her 15th birthday. If the person is over 13 when the claim accrues, he or she is subject to the usual medical malpractice SOL. The bill provides, instead, that if a claim alleging medical malpractice accrued to a person who was eight years old or younger, an action based on the claim would have to be commenced on or before his or her 10th birthday. A person who was older than eight at the time a medical malpractice claim accrued would be subject to the limitation period otherwise applicable to that type of claim.

The RJA also provides for the tolling of the SOL if the person entitled to make a claim is insane

or imprisoned. The bill provides that, if a person were insane at the time a claim of medical malpractice accrued, the SOL would not be tolled if a legal guardian, with authority to bring an action under the RJA, were appointed for the person. The bill also specifies that the grace period for insanity or imprisonment would not apply after the six-year period provided in the bill for the filing of medical malpractice suits or complaints, unless discovery of the existence of a claim were prevented by a health care provider's fraudulent conduct.

#### Other Provisions

**Burden of Proof.** In a medical malpractice action, whether the plaintiff sought damages for personal injury or wrongful death, the plaintiff would have the burden of proving that his or her injury "was more probably than not caused by the defendant's negligence and would not have occurred but for the negligence of the defendant or negligence of the defendants if the negligence of more than 1 defendant was the proximate cause of the injury". If the plaintiff failed to meet that burden, he or she could not recover for loss of an opportunity to survive.

**Waiver of Physician-Patient Privilege.** A person who commenced a medical malpractice action would waive, for purposes of that action, his or her physician-patient privilege with respect both to persons involved in the acts, transactions, events, or occurrences that were the basis for the action and to those who provided care or treatment to the claimant either before or after those acts, transactions, events, or occurrences.

A person who was the subject of a medical malpractice action or that person's attorney could communicate with others in order to obtain all information relevant to the subject matter of the claim or to prepare a defense. A person who disclosed otherwise privileged information to a person who was the subject of a medical malpractice action, or to that person's attorney, would not be in violation of a physician-patient privilege or any other similar duty or obligation created by law and owed to the claimant.

**Interest.** Interest on judgments could be calculated only on the amount of the judgment actually to be received by the plaintiff, excluding attorney fees and other costs.

## **FISCAL IMPACT**

### **Senate Bill 248 (S-3)**

The bill would have an indeterminate fiscal impact on the State. The bill would require the Department of Commerce to develop a Medical Liability Determination Program by establishing a new agency for this purpose, hiring a commissioner, and providing support for the activities of certain medical liability determination panels for five regions of the State. If the proposed Program's budget included a commissioner's salary, the salary of three support personnel, and other support expenses, the bill could result in a cost to the State of a minimum of \$200,000.

### **Senate Bill 249 (S-4)**

The bill would have no fiscal impact on State or local government.

## **ARGUMENTS**

### **Supporting Argument**

Michigan is suffering from a medical malpractice crisis, which adversely affects all of its citizens, not just doctors and lawyers. The number of malpractice claims made and the size of awards and settlements in Michigan are greater than in most other states. This is detrimental not only to medical professionals, who are increasingly vulnerable to lawsuits and must pay excessively high insurance premiums for limited coverage, but also to the level of medical care received by the public.

Doctors and hospital officials from all parts of Michigan claim that the liability climate in the State and the continuing high cost of medical malpractice insurance are affecting Michigan residents' access to health care, the ability to recruit quality physicians to Michigan practices and hospitals, and the quality of care received by patients. Access to health care in Michigan is limited, especially for the poor, uninsured, or underinsured, as well as for those seeking care in specialty areas such as obstetrics, neurology, orthopedics, and emergency medicine. According to testimony before the Senate Judiciary Committee's subcommittee on medical liability, many doctors in Michigan, particularly in

southeastern Michigan and rural areas of the State, have stopped taking Medicaid patients, have scaled back or eliminated obstetric care, and refer high risk cases of all types to the few physicians around the State willing to take them. This has resulted in the limited availability of medical care for the poor, for pregnant women, and for those most in need of long-term neurological and orthopedic care. Physicians being trained to practice medicine today consistently rank liability concerns high among their criteria in deciding where to locate their permanent practices after residency, and a vast majority of those trained in Michigan medical schools or residency programs leave Michigan to start their practices. Consequently, it is almost impossible to recruit newly trained doctors, especially obstetricians, emergency medical care providers, and neurologists to practice here. In addition, many new doctors who initially settle in Michigan decide later to leave for other states in order to take advantage of more favorable liability climates and smaller insurance premiums, while Michigan's more experienced physicians often tend to limit the scope of their practices or retire early. The limiting of physicians' practices, the flight of medical personnel, and the inability to recruit the best new doctors to the State have combined to decrease the access to and quality of care received in Michigan.

Since high insurance premiums and the likelihood of being sued are deterring physicians from practicing in Michigan, it stands to reason that reducing those factors would help to improve the availability and quality of health care received here. By limiting the size of noneconomic awards and restricting the statute of limitations for alleged injuries to minors, Senate Bill 249 (S-4) would help improve Michigan's medical liability climate. With the enactment of those measures, Michigan doctors would be less likely to be sued and their insurers would be less likely to be forced to pay out large awards or settlements, which in turn should bring medical malpractice insurance rates down. Passage of the bills would make Michigan a much more attractive place to practice medicine, increasing the ability of the State's hospitals and medical practices to recruit the best doctors and resulting in more and better medical care for Michigan citizens.

**Response:** The medical malpractice "crisis" in Michigan, if one does exist, is not that too

many doctors are being sued, medical malpractice premiums are too high, or victims' awards are excessive, but rather that too much medical malpractice is occurring at all and that insurance companies are too loosely regulated. The bills' focus should be on curbing physicians' negligence and reducing insurers' windfall profits from unnecessarily high premiums. The Lansing State Journal has reported, for instance, that PICOM tripled its profits in the first three quarters of 1991. PICOM reportedly earned more than \$7.5 million in the first nine months of 1991, compared to \$2.8 million during the same period of 1990. The bills' only real effect would be to limit the ability of medical malpractice victims to seek recourse and to collect financial damages for injuries done to them by bad doctors providing poor medical care.

#### Supporting Argument

The cap on noneconomic damages for medical malpractice injuries established in the 1986 reforms has not had much of an impact on the size of excessive awards because the exceptions to that cap are too broad. A strict cap on noneconomic losses would reduce the incidence of unrealistic jury awards while still protecting the right of an injured party to recover the full amount of economic damages. Since noneconomic losses cannot be easily translated into monetary amounts, arriving at an award for noneconomic losses is a very subjective and emotional process for a jury. There is a common belief that damages for such losses often are overly generous and arbitrary. A number of other states with better medical malpractice climates reportedly have strict caps on noneconomic damages. Eliminating the exceptions to the cap on damages for pain and suffering should help to stabilize malpractice premiums without denying the injured party full reimbursement for out-of-pocket losses.

**Response:** Although insurers and doctors complain about "excessive jury awards" and "overly generous juries," it must be remembered that juries are made up of hard-working individuals who take their role as juror very seriously. When a jury verdict is, in fact, excessive, trial judges have the ability to reduce the verdict, and any judgment always can be appealed.

#### Supporting Argument

The legal profession is profiting shamelessly

from the adverse liability climate in Michigan. A recent study of how the cost of liability claims varied among states, performed by the actuarial consulting firm Tillinghast, showed that liability claimants receive only 36.7% of liability payments by insurance companies. Legal costs of medical liability lawsuits account for approximately the same portion of awards and settlements. Clearly, Michigan's hostile environment toward the medical profession is a boon to the State's legal profession. The bills not only would discourage this gouging of Michigan citizens' health care dollar by establishing a streamlined pretrial liability determination process and limiting the size of attorneys' contingency fees, but also would ensure that plaintiffs who won awards, rather than their attorneys, received the bulk of the financial benefit from lawsuits that sought damages for those injured by medical malpractice.

**Response:** The legal costs portion of medical liability awards in the Tillinghast study is misleading because it reflects payments to attorneys for both plaintiffs and defendants. In addition, the bills' measures to restrict the contingency fees of plaintiffs' attorneys would penalize those who apparently are performing their jobs well—lawyers who win awards for their injured clients—while doing nothing to penalize those who are doing their jobs poorly—bad doctors. Further, contingency fee levels are established in court rule, so any effort to alter those levels should involve the State Supreme Court.

#### Supporting Argument

The high cost of malpractice insurance coverage and the likelihood of a physician's being sued not only influence the availability and quality of health care, but also lead to greater costs of medical care in Michigan. The high cost of liability insurance here is borne by those who must pay for the medical care received. The Tillinghast study indicated that Michigan hospitals' liability costs are the highest in the country and that Michigan physicians' costs are second only to those in New York. Liability expenses are a cost of doing business and, of course, are passed on to the consumers: those receiving medical care. In addition, since the liability climate is so unfriendly to doctors, they often resort to practices of "defensive medicine". Even if a physician is confident in his or her ability to diagnose and treat a medical problem,

the doctor reportedly will require many tests and procedures that may not be necessary, but could help in a defense against a lawsuit. The costs of such unnecessary procedures also are passed along to the patient.

**Response:** It has been widely reported that medical liability expenses represent only about 1% of the costs of health care. Even if medical liability costs could be completely eliminated, it would have almost no effect on the affordability of health care. In addition, while so-called defensive medicine practices do add to patients' health care expenses (and, hence, to the income of health care professionals and facilities), such practices do not provide a defense against failing to meet an established standard of medical care.

#### Supporting Argument

The bills would eliminate the use of "professional expert" witnesses, by imposing strict requirements on their medical practice and teaching experience. Testimony of an expert normally is required to establish a cause of action for malpractice, by establishing the appropriate standard of care and showing a breach of that standard. The current restrictions on medical expert witnesses are too loose to keep out those who hire out their services as "experts" and compete fiercely for such business. By requiring that qualified expert witnesses actually practice or teach in the specialty area of the defendant, the bills would ensure that they had first-hand expertise in the subject matter about which they testified.

**Response:** While not as overly restrictive as the original version of Senate Bill 249, which would have required expert witnesses to be from states contiguous with Michigan, the substitute still would go too far in setting standards for expert witness testimony. By requiring that 80% of a witness's professional time in the previous year have been spent in active teaching or clinical practice, the bill would exclude doctors who spent a substantial amount of professional time, though perhaps less than 80%, in that pursuit; those who were involved primarily in research; and those who could have met the bill's standards in recent years, but were recently retired. The 80% standard is simply a roadblock to make it more difficult for plaintiffs to pursue their claims.

#### Supporting Argument

The Medical Liability Determination Program proposed by Senate Bill 248 (S-3) would reduce

the civil caseload of Michigan's courts, speed up the resolution of medical malpractice claims, and provide an alternative to the current confrontational system of resolving claims. Use of the Program to resolve medical malpractice disputes would free overburdened court dockets of such cases, thereby allowing the courts to operate more efficiently. In addition, imposing specific deadlines for Program procedures would ensure that disputes were settled and/or awards made quickly, relieving the parties of the stress and anxiety that accompany malpractice litigation and allowing the parties to get beyond their personal tragedies in a timely manner. Finally, the Program would provide those who had already suffered harm with a forum in which to resolve their claims that would not be as adversarial as a courtroom.

**Response:** The proposed Medical Liability Determination Program would restrict access to courts and make the resolution of malpractice claims more cumbersome. Although the bill's procedures could be bypassed with the agreement of both parties, most cases likely would go through the Program's proceedings and then a trial. The Program, then, would just be another round of contested hearings. In addition, the makeup of the Program's panels would be unbalanced and their membership qualifications questionable. While each panel would contain a health professional, an attorney, and a public member, the bill's qualification requirements do not necessarily suggest a knowledge of, or familiarity with, the topics on which the panel would sit in judgment. The proposed panel process merely represents an obstacle to an injured party's right to pursue a legitimate claim and receive an appropriate award.

#### Opposing Argument

The bills would improve neither the access to, nor the quality of, medical care received in Michigan. If there is a problem with health care access in this State, it is not because of any perceived medical malpractice crisis. Indeed, Michigan reportedly has more doctors today, earning higher incomes than ever, than at any time since 1964, and although it is true that most medical professionals who are trained, or serve their residencies, in Michigan do leave the State, it also is true that most came to Michigan for training from other states or countries and never intended to settle in Michigan permanently. Access-to-care problems are

rooted not in liability concerns, but in low Medicaid reimbursement rates, lack of affordable health care insurance for those with low and moderate incomes, and an emphasis on specialties, rather than primary care, in medical school training. Doctors are refusing Medicaid patients and declining to take additional patients because providing care to Medicaid or uninsured patients often costs more than Medicaid will reimburse or uninsureds can afford. In addition, the blame for any shortage of rural and family care physicians has been laid squarely on the backs of medical schools by some medical professionals themselves. Indeed, a faculty member of Michigan State University's College of Human Medicine reportedly claimed in the October 7, 1991, edition of the American Medical News, that "the sideshow is swallowing up the main tent" in medical training. According to the MSU professor, the purpose of medical school should be to educate students in primary care, but the schools have gotten into "high-tech tertiary care" as the primary issue in medical training. Moreover, proponents of the bills claim that they would help to improve the quality of health care received in Michigan, but the bills actually would further protect bad doctors from accepting the full weight of responsibility for their negligent acts. The bills would do nothing to ensure that physicians' knowledge, skills, and performance were reviewed or that they were professionally disciplined for failure to maintain up-to-date knowledge, skills, and standards of care.

#### **Opposing Argument**

Restricting victims' rights in Michigan's tort system would not reduce medical malpractice insurance rates, discourage the filing of medical malpractice claims, or affect the incidence of malpractice committed by doctors. As long as medical professions fail to police their members adequately, poor doctors will continue to practice medicine, resulting in more frequent claims filed. The only way to decrease medical malpractice claims is to decrease the incidence of medical malpractice. Further, the president of the Physician Insurers Association of America reportedly has asserted that the country's recession, the mounting national debt and unemployment rate, and the savings and loan bailout could have a devastating effect on insurance companies' investment income, thereby forcing them to raise premiums. Apparently, economic and market forces play a

greater role in the determination of insurance rates than does the size or frequency of awards. To bring rates down, the State should more closely scrutinize insurers' management and investment practices, rather than restricting victims' rights to pursue compensation for injuries sustained.

#### **Opposing Argument**

Just a few years after last coming to Legislature claiming a medical malpractice "crisis" and clamoring for tort reform, health professionals and liability insurers once again are demanding even further tort reforms to address yet another alleged crisis. If implementation of tort reforms in 1986 did significantly reduce the number of medical malpractice claims, the rates for insurance coverage, or the size of malpractice awards and settlements, it stands to reason that the tort system was not the root of the problem in the first place. Further restricting medical malpractice victims' rights to secure damages for injuries sustained at the hands of doctors again would have little effect on claims filed, rates paid, and awards won.

**Response:** The 1986 reforms did not go far enough. In the spirit of compromise, those reforms included exceptions to the noneconomic award cap, for instance, that make the cap almost meaningless. Senate Bill 249 (S-4) would help to reduce the crisis not only by eliminating those exceptions, but also by limiting contingency fees, bolstering expert witness requirements, and revising the statute of limitations for some malpractice claims.

#### **Opposing Argument**

The bills are a response to an inaccurate notion that patients are quick to sue their doctors. In fact, a study published in the New England Journal of Medicine in July 1991 challenges that belief. The study evaluated more than 30,000 hospital records in New York State and concluded that only one person out of 65 injured by the negligence of health care professionals ever files suit. The same research team found, in an earlier project, that four out of 100 people who enter a hospital are injured by their medical treatment, and that one in four injuries results from negligence. The findings of the two research projects indicate that for every 6,500 people who are hospitalized, 65 are injured through negligence but only one files suit.

**Response:** The same study also found that,

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Legislative Analyst: P. Affholter  
Fiscal Analyst: B. Baker (Senate Bill 248)  
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SENATE BILL No. 249

[illegible]

A Bill to amend the title and extend for 401, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 11

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**A9192/S248A**

**This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.**

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# EXHIBIT B

**SFA**

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

(517) 373-5383

**MASTER FILE**

Senate Bill 270

Sponsor: Senator Dan L. DeGrow

Committee: Judiciary

Date Completed: 2-4-93

SUMMARY OF SENATE BILL 270 as introduced 1-28-93:

The bill would amend the Revised Judicature Act (RJA) to implement certain revisions in medical liability determination procedures. The bill would do all of the following:

- Prohibit the filing of a medical malpractice action unless, based on reasonable investigation, the plaintiff and his or her attorney had a "good faith belief" in the existence of the facts upon which the claim was based and that those facts constituted a valid claim.
- Limit an attorney's contingency fee in a claim or action alleging a personal injury or wrongful death.
- Remove the exceptions to the RJA's limitation on noneconomic damages in medical malpractice awards, and increase that cap from \$225,000 to \$250,000.
- Revise the RJA's regulations regarding the use of an expert witness in a medical malpractice claim.
- Require a 180-day notice before a medical malpractice action was commenced, and revise requirements for filing an affidavit.
- Revise the statute of limitations (SOL) for certain medical malpractice claims.
- Make other provisions pertaining to: legislative findings and intent; burden of proof; waiver of a plaintiff's physician-patient privilege; and interest on judgments.

Good Faith Belief

If a plaintiff and his or her attorney did not meet the bill's "good faith belief" standard for filing a medical malpractice action, the plaintiff and attorney would be liable for damages incurred by the defendant if both of the following occurred:

- The action was terminated in favor of the defendant.
- The defendant suffered injury or damages that were proximately caused by the institution of the action. (The defendant would not be required to prove special damages.)

Contingency Fees

A contingency fee agreement made with a client by an attorney would have to be in writing and be executed at the time the client retained the attorney for the claim or action to which the agreement applied. Failure to comply with this requirement would bar an attorney from collecting a fee that was larger than the

minimum of the two alternative contingency fees allowed under the bill. Other provisions of the contingency agreement would remain enforceable, however. An attorney would have to include a statement of his or her usual and customary hourly rate of compensation in a contingency fee agreement and provide a copy of the agreement to the client.

In an action filed under the RJA for personal injury or wrongful death based on another person's conduct, if an attorney entered into a contingency fee agreement with his or her client and a recovery resulted, the attorney's fee could not exceed: 40% of the first \$5,000 of the recovery; 35% of the portion over \$5,000, but less than \$25,000; 25% of the portion that was \$25,000 or more, but less than \$250,000; 20% of the portion that was \$250,000 or more, but less than \$500,000; and 10% of the portion that was \$500,000 or more. As an alternative, a contingency fee could be: not over 33-1/3% of the first \$250,000 recovered; no more than 20% of the portion over \$250,000, but less than \$500,000; and no more than 10% of the portion over \$500,000.

An attorney who entered into a contingency fee agreement that violated the bill's limits would be prohibited from recovering fees in excess of the attorney's reasonable actual fees based on his or her usual and customary hourly rate, up to the minimum contingency fee allowed under the bill. Other provisions of the agreement would remain enforceable. Contingency fees would have to be calculated "on the net sum of the recovery after deducting from the recovery the properly chargeable disbursements". Costs taxed (imposed upon a party to the action) by the court would be part of the amount of the money judgment. If a recovery were payable in installments, the fee would have to be computed using the present value of future payments.

#### Award Cap

Under the RJA, damages for noneconomic loss that result from a medical malpractice claim are limited to \$225,000, except under certain circumstances. The bill would increase the cap to \$250,000 and remove those exceptions, which include: a death; an injury involving the patient's reproductive system; the loss of a vital bodily function; an intentional tort; and circumstances under which a foreign object was left in a patient's body, a health care provider's fraudulent conduct prevented the discovery of a claim, or a patient's limb or organ was wrongfully removed.

The bill also specifies that, in a jury trial for medical malpractice, the court could not apprise the jury of the cap on noneconomic damages or allow either party to do so. In an action alleging medical malpractice, the court would have to reduce to \$250,000 an award of damages for noneconomic loss that exceeded that amount.

"Noneconomic loss" means "damages or loss due to pain, suffering, inconvenience, physical impairment, physical disfigurement, or other noneconomic loss". The RJA's noneconomic loss limit must be "increased" annually by an amount determined by the State Treasurer to reflect the cumulative annual percentage "increase" in the consumer price index (CPI). The bill provides, instead, that the State Treasurer would have to "adjust" the noneconomic loss limit to reflect the "change" in the CPI.

#### Expert Witnesses

In an action alleging medical malpractice, the RJA prohibits a person from giving

limitations provisions. The notice would have to inform the health professional or health facility of the basis for the claim and would have to be accompanied by an affidavit of merit signed by a health professional who met the bill's expert witness requirements. The affidavit would have to certify that the signing health professional reviewed the complaint and all available medical records relevant to the allegations. The affidavit would have to include a statement of each of the following:

- The applicable standard of practice or care.
- The signing health professional's opinion that the applicable standard of practice or care was breached by the health care professional or facility named as a defendant.
- The actions that should have been taken or omitted by the professional or facility named as defendant in order to have complied with the applicable standard of practice or care.
- The manner in which the breach of the standard of practice or care was the proximate cause of the injury alleged in the complaint.

Within 90 days after receiving the notice, the health professional or facility against whom a claim was made would have to give the claimant an affidavit of meritorious defense. The affidavit would have to be signed by the health professional, or his or her attorney, or a representative of the health facility, or the facility's attorney, and attest that the health care professional or facility, or the attorney, had obtained a written opinion from an appropriate health professional, who was not the subject of the claim, that there was meritorious defense to the claim.

Within 14 days after giving notice to the health professional or facility who was the subject of a claim, the claimant would have to allow the professional or facility to have access to the medical records related to the claim. Likewise, within 14 days after receiving the notice, the health professional or facility would have to allow the claimant access to the professional's or facility's medical records related to the claim.

Currently, the RJA provides that, within 21 days after a plaintiff furnishes security or files an affidavit, the defendant must file an answer to the complaint. Within 91 days after filing an answer, the defendant must furnish security for costs or an affidavit. The bill, instead, provides that within 60 days after a plaintiff filed a complaint alleging medical malpractice, accompanied by a certificate as required by the bill, the defendant would have to file with the court an affidavit of meritorious defense. An affidavit of meritorious defense would have to be signed by a health professional who met the bill's expert witness requirements and would have to certify that the signing health professional reviewed the complaint and all available medical records relevant to it. The affidavit would have to include a statement of each of the following:

- The applicable standard of care.
- The health professional's opinion that the applicable standard of care was not breached by the professional or facility named as a defendant, that there was one or more meritorious defenses to the claims in the complaint, or both.

#### Statute of Limitations

The RJA provides that an action involving a medical malpractice claim may be

expert testimony on the appropriate standard of care, if the defendant is a specialist, unless the expert witness is a "physician licensed to practice medicine or osteopathic medicine and surgery or a dentist licensed to practice dentistry" in Michigan or another state and is a specialist in the same or a related, relevant area as the defendant. An expert witness also must devote, or have devoted at the time of the occurrence in question, a "substantial portion" of his or her professional time to clinical practice or the instruction of students in the same or a related specialty at an accredited medical, osteopathic, or dental school.

The bill, instead, would require that an expert witness be a licensed "health professional" in Michigan or another state. If the defendant against whom the witness offered testimony were a specialist, the expert witness still would have to specialize in the same or a related, relevant area at the time of the occurrence. If the defendant were a specialist certified by the American Board of Certification, the expert witness also would have to be certified by that Board in the same specialty. During the year immediately preceding the date of the occurrence in question, the expert witness would have to have devoted at least 80% of his or her professional time to either or both of the following:

- The active clinical practice of the same health profession in which the defendant was licensed or, if the defendant were a specialist, active clinical practice in that specialty or a related, relevant area.
- The instruction of students in an accredited health professional school in the same profession in which the defendant was licensed or, if the defendant were a specialist, in an accredited health professional school in the same specialty or a related, relevant area.

If the defendant against whom the witness offered testimony were a general practitioner, the expert witness, during the year immediately preceding the date of the occurrence in question, would have to have devoted 80% of his or her professional time to active clinical practice as a general practitioner.

#### Affidavit and Notice Requirements

In a medical malpractice action, the RJA requires that a complaint be accompanied either by security for costs or by an affidavit. The security may take the form of a bond with surety or any other equivalent security approved by the court, including cash in an escrow account, for costs in an amount of \$2,000. An affidavit may be filed by the plaintiff or the plaintiff's attorney and must attest that the plaintiff or attorney has obtained a written opinion from a licensed physician, dentist, or other appropriate licensed health care provider that the claim alleged is meritorious. The bill, instead, would prohibit a person from commencing an action alleging medical malpractice unless the complaint was accompanied by a certificate signed by the person, or his or her attorney, reflecting that the person had complied with the bill's notice and affidavit of merit requirements. If a complaint were not accompanied by such a certificate, the complaint would not toll the statute of limitations. The court would have to dismiss a claim not included in the notice required to be given to the defendant prior to commencing an action, unless that claim resulted from previously unknown information obtained during discovery.

A person could not commence a medical malpractice action against a health professional or health facility, unless he or she gave the professional or facility notice of the action at least 180 days before filing the action and at least 180 days before the claim would be barred under the RJA's statute of

commenced at any time within the applicable period prescribed by the Act, or within six months after the plaintiff discovers, or should have discovered, the claim's existence, whichever is later. No claim, however, may be commenced later than six years after the date of the act or omission that is the basis for the claim, unless discovery of the claim was prevented by a health care provider's fraudulent conduct, a foreign object was left in the patient's body, or the injury involved the reproductive system. The bill would allow a claim to be commenced later than six years after the date of the act or omission only if discovery of the claim's existence were prevented by a health care provider's fraudulent conduct.

Under the RJA, if a person is under 18 years old at the time he or she is first entitled to bring a court action, the SOL applicable to his or her claim is suspended until one year after the disability of infancy is removed. The RJA specifies, however, that if a medical malpractice claim accrues to a person who is 13 years old or younger, an action based on the claim must be commenced on or before his or her 15th birthday. If the person is over 13 when the claim accrues, he or she is subject to the usual medical malpractice SOL. The bill provides, instead, that if a claim alleging medical malpractice accrued to a person who was eight years old or younger, an action based on the claim would have to be commenced on or before his or her 10th birthday. A person who was older than eight at the time a medical malpractice claim accrued would be subject to the limitation period otherwise applicable to that type of claim.

The RJA also provides for the tolling of the SOL if the person entitled to make a claim is insane or imprisoned. The bill provides that, if a person were insane at the time a claim of medical malpractice accrued, the SOL would not be tolled if a legal guardian, with authority to bring an action under the RJA, were appointed for the person. The bill also specifies that the grace period for insanity or imprisonment would not apply after the six-year period provided in the bill for the filing of medical malpractice suits or complaints, unless discovery of the existence of a claim were prevented by a health care provider's fraudulent conduct.

#### Other Provisions

Burden of Proof. In a medical malpractice action, whether the plaintiff sought damages for personal injury or wrongful death, the plaintiff would have the burden of proving that his or her injury "was more probably than not caused by the defendant's negligence and would not have occurred but for the negligence of the defendant or negligence of the defendants if the negligence of more than 1 defendant was the proximate cause of the injury". If the plaintiff sought to recover damages for wrongful death and failed to meet that burden, he or she could not recover for loss of an opportunity to survive.

Waiver of Physician-Patient Privilege. A person who commenced a medical malpractice action would waive, for purposes of that action, his or her physician-patient privilege with respect both to persons involved in the acts, transactions, events, or occurrences that were the basis for the action, and to those who provided care or treatment to the claimant either before or after those acts, transactions, events, or occurrences, regardless of whether the person were a party to the action.

A person who was the subject of a medical malpractice action or that person's attorney could communicate with others in order to obtain all information relevant to the subject matter of the claim or to prepare a defense. A person

who disclosed otherwise privileged information to a person who was the subject of a medical malpractice action, or to that person's attorney, would not be in violation of a physician-patient privilege or any other similar duty or obligation created by law and owed to the claimant.

Interest. Interest on judgments could be calculated only on the amount of the judgment actually to be received by the plaintiff, excluding attorney fees and other costs.

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Legislative Findings and Intent. The bill specifies that the Legislature would find and declare that Michigan has "a serious health care litigation problem...resulting in the high costs of defensive medicine and medical malpractice insurance". In addition, the bill states that "this severely threatens access to and cost control of the health care delivery system...and results in a breakdown of the health care delivery system, severe hardships for the medically indigent, a denial of access for the economically disadvantaged, and depletion of the supply of physicians such as to substantially worsen the quality of health care available" to Michigan citizens. The bill further specifies that, the Legislature, "acting within the scope of its police powers, finds that...[the bill] is intended to provide an adequate and reasonable remedy within the limits of what the foregoing public health and safety considerations permit now and into the foreseeable future".

MCL 600.1483 et al.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill's provisions that would limit malpractice suit award amounts and the number of malpractice suits filed would have some fiscal impact on the following State and local agencies that employ physicians and other health care professionals: the Department of Mental Health, Department of Corrections, the Veterans' Facilities, and local health departments. It is not possible to determine the extent of the fiscal impact at this time.

Fiscal Analyst: L. Nacionales-Tafoya

S9394\S270SA

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

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# EXHIBIT C

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who says "I'll cut the budget, I'll ome up with programs that really, uses. And in contrast we have a reaking them as he assumes the icture of the real Bill Clinton, the future of America, and they will of a campaign and that it's costing er administration promises made, n.

ess to the nation last night and to ne of the things that I found most trend. Instead of trickle down, it's

to the rich and let it trickle down duals of money, and corporations, ry, they'll feel benevolent enough en though the recession seems to of when we came out of the last

skle down generally trickle their ds and more protection for their eshing to see a President say that d the least ability to impact those

Those at the bottom of the scale traditionally have to pay the most. They pay the most in insurance. They pay the most in the environment they live in. They pay the most in terms of percentages of income taxes as always proposed by my Republican colleagues. Its refreshing to see that this time around those at the top of the scale, those who make the most money in this society are going to have to be the ones who ante up for the majority of the bill, of dealing with an out-of-control deficit.

I found it interesting last night in watching and this morning I watched CBS interview Ross Perot. Ross talked about a number of things but one thing he did say, was that the important thing about the presidential election and his running in that election and what he saw Bill Clinton do last night, is he brought the deficit out of the closet. He talked about it as a crazy aunt who you keep in the basement who you don't talk about, but has to be talked about in America because that deficit is growing so large, it's going to strangle every one of your children and grandchildren. It's a deficit that has not been dealt with by Reagan, that has not been dealt with by Bush, even though Reagan gave the biggest tax break in history to the richest in this country. Did it reduce the deficit any? Not at all. The deficit continued to skyrocket under his hands and under his predecessor's hands. It has to be dealt with. That was one of the points that Ross Perot made. It has to be dealt with. He also made the point that we should be willing to invest in America's future.

So you can sit here and attack all you want Mr. Floor Leader. You can defend the Republican policies all you want, but we don't want more trickle down economics. We don't want more mean-spirited reductions that deal with the least of these and the hardest hit population in this country, those who are least able to defend themselves. You talk about families, you talk about children, but your philosophy and the direction you go continues to favor the privileged in this society. So, I find it very refreshing to see trickle up rather than trickle down.

Senator Conroy's statement is as follows:

It's the first time in quite a long while that we have heard somebody talk about the deficit. I know that sounds like kind of a Republican idea to talk about the deficit, but I have always supported the fact that we ought to balance the budget. I believe that although many could disagree with what the President said, in some ways at least, he did say that this country is growing very dependent on outside agencies, outside governments to finance this budget in this country. And unless we do something about it, it will choke us to death.

So, I guess we can all say that our guy lost or our guy won and "hurray" or "boo," whatever way we want to do that. But it seems to me that we ought to be talking about the deficit, the accumulated debt that this country has.

Twelve years ago the debt was a little less than one trillion dollars. Today it's over 4.1 trillion dollars. I believe that the Detroit News did a tremendous service yesterday in picturing how that debt is being captured. Who's paying for it? Japan is paying for it every Monday morning. Germany is paying for it every Monday morning. So are our Social Security contributors paying for it every Monday morning when they buy those bonds that allow us to continue to be in debt and to be in deficit each year.

It has been quite a few years since we have even had a budget proposed that was balanced. I think that if we are going to take a shot at this President, we ought to do it when he proposes his budget. If it's not balanced, then we ought to call him on it. But I would think that the discussion last night, at least, was good in that it did talk about the deficit. It talked about the debt— we have not heard that in 12 years.

Now, we've heard about this veto business which is fine with me, but we don't let our people know about the debt. That is our secret, and Ross Perot let the country know that we had that secret. It seemed to me that if any of you listened to him last night around midnight, he was just delighted to hear of the talk of trying to do something about this accumulated debt and the ongoing building deficit we have in this country.

Senator Arthurhultz moved that the order of Third Reading of Bills be postponed temporarily. The motion prevailed.

#### General Orders

Senator Arthurhultz moved that the Senate resolve itself into the Committee of the Whole for consideration of the General Orders calendar.

The motion prevailed, and the President designated Senator Conroy as Chairperson.

After some time spent therein, the Committee arose; and, the President having resumed the Chair, the Committee reported back to the Senate, favorably and with a substitute therefor, the following bill:

#### Senate Bill No. 270, entitled

A bill to amend sections 1483, 2169, 2912a, 2912d, 2912e, 5838a, 5851, 5856, and 6013 of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judicature act of 1961," sections 1483, 2169, 2912d, 2912e, and 5838a as added and section 5851 as amended by Act No. 178 of the Public Acts of 1986 and section 6013 as amended by Act No. 50 of the Public Acts of 1987, being sections 600.1483, 600.2169, 600.2912a, 600.2912d, 600.2912e,

600.5838a, 600.5851, 600.5856, and 600.6013 of the Michigan Compiled Laws; to add sections 955, 2912b, 2912f, 2912g, and 2912h; and to repeal certain parts of the act.  
(Substitute (S-2) in bill form.)

The following are the amendments to the substitute recommended by the Committee of the Whole:

1. Amend page 5, line 19, after "index." by inserting "HOWEVER, THE LIMITATION ON DAMAGES FOR NONECONOMIC LOSS AS ADJUSTED UNDER THIS SUBSECTION SHALL NOT BE LESS THAN THE LIMITATION ON DAMAGES FOR NONECONOMIC LOSS IN EFFECT FOR THE IMMEDIATELY PRECEDING CALENDAR YEAR."

2. Amend page 8, following line 6, by inserting:

"(5) NO HEALTH CARE FACILITY, STATE AGENCY, OR PROFESSIONAL CORPORATION SHALL, AS A TERM OR CONDITION OF EMPLOYMENT OR STAFF MEMBERSHIP, PROHIBIT OR DISCOURAGE AN EMPLOYEE FROM TESTIFYING AS AN EXPERT WITNESS IN ANY CIVIL ACTION. VIOLATION OF THIS SUBSECTION SHALL BE PUNISHABLE BY A FINE NOT TO EXCEED \$5,000.00."

3. Amend page 18, line 12, by striking out "IF" and inserting "under 1 or more of the following circumstances:  
(a) IF".

4. Amend page 18, following line 17, by inserting:

"(b) (a) If the injury involves the reproductive system of the plaintiff."

5. Amend page 27, following line 9, by inserting:

"Section 4. This amendatory act shall not take effect unless all of the following bills of the 87th Legislature are enacted into law:

- (a) Senate Bill No. 333.
- (b) Senate Bill No. 334.
- (c) Senate Bill No. 335.
- (d) Senate Bill No. 336.
- (e) Senate Bill No. 337.
- (f) Senate Bill No. 338.
- (g) Senate Bill No. 339.
- (h) Senate Bill No. 340.
- (i) Senate Bill No. 341.
- (j) Senate Bill No. 342.
- (k) Senate Bill No. 343."

The Senate agreed to the substitute, as amended, recommended by the Committee of the Whole and the bill as substituted was placed on the order of Third Reading of Bills.

By unanimous consent the Senate returned to the order of  
**Motions and Communications**

Senator Arthurhultz moved that the rules be suspended and that the following bill, now on the order of Third Reading of Bills, be placed on its immediate passage:

**Senate Bill No. 270**

The motion prevailed, a majority of the Senators serving having voted therefor.

Senator Schwarz asked and was granted unanimous consent to make a statement and moved that the statement be printed in the Journal.

The motion prevailed.

Senator Schwarz' statement is as follows:

I am not going to discuss what's been discussed by the last several speakers, but wish to tell my fellow members of the Senate that we are losing a long-time and loyal Senate employee today. Debi Pineau, who has been working for the office of the Secretary of the Senate since February 1986 and has been the secretary to Bill Snow, the Secretary of the Senate, since February 1987, is leaving the Senate. Debi and her husband recently moved to Pinckney and Debi wants to be a little closer to home and has accepted a position as administrative assistant to the President of the Korex Company. Debi's final day at work will be tomorrow, Friday, February 19. Debi has been a very loyal and exceptional Senate employee and has always been certainly a bright light of sunshine when it gets a little dark and gray around this place. She is a constituent of mine in the 20th District and I know you want to join me in wishing Debi the very best as she leaves the Senate and goes on to other endeavors.

There will be a farewell party for Debi this evening at a notorious local saloon, the Harrison Roadhouse, beginning at 5:30 p.m. I have a resolution that virtually all of you have signed to present to Debi and I would like to wish her very well and I am sure that you join me in doing so. There is cake out in the vestibule for those of us who are interested, and that usually is everyone.

By unanimous consent the Senate

By unanimous consent the Senate  
**Senate Bill No. 270, entitled**

A bill to amend sections 1483, 2 Public Acts of 1961, entitled as amended, 5838a as added and section 5851 as added by Act No. 50 of the Public Acts of 1961, 600.5838a, 600.5851, 600.5856, and 2912f, and 2912g.

The above bill was read a third time. The question being on the passage, Senator Kelly offered the following:

- 1. Amend page 9, line 21, after
- 2. Amend page 10, following line

"(2) IN ORDER TO ALLEVIATE THE SHORTAGE OF SOCIAL SERVICES SHALL TO PRACTICE IN HEALTH RESOURCES DEPARTMENT OF SOCIAL SERVICES DESIGNATION OF A GEOGRAPHIC AREA AS A HEALTH RESOURCE SHORTAGE AREA. CRITERIA DEVELOPED BY THE PUBLIC HEALTH CODE, ACT 291 OF THE MICHIGAN COMPILED LAWS AS DESIGNATED BY THE DEPARTMENT OF SOCIAL SERVICES SHALL BE USED TO DETERMINE IF A SHORTAGE EXISTS. IF A SHORTAGE IS DETERMINED, THE DEPARTMENT OF SOCIAL SERVICES SHALL AGREE TO PRACTICE IN THE AREA. THE DEPARTMENT SHALL NOT PAY TO A PHYSICIAN AN AVERAGE PREMIUM PAID TO A PHYSICIAN SET BY THE INSURANCE COMMISSION. SOCIAL SERVICES MAY PROVIDE A FEE OF \$100 PER HOUR, 1969, ACT NO. 306 OF THE PUBLIC ACTS OF 1969, TO IMPROVE THE QUALITY OF THE PROGRAM. TO THE TOTAL A LIMIT ON INDIVIDUAL GRANTS UNDER THE PROGRAM. A RESOURCE SHORTAGE AREA IS THE PROGRAM OF MEDICAL SERVICES, CHAPTER 531, 49 STATUTES, THE DEPARTMENT OF SOCIAL SERVICES, PUBLIC ACTS OF 1939, BEING THE DEPARTMENT OF SOCIAL SERVICES. The amendments were seconded.

Senator Arthurhultz moved that the bill be taken by the Yeas and Nays. The motion prevailed, a majority of the Senators serving having voted therefor.

Senator Kelly moved that the bill be taken by the Yeas and Nays. The motion prevailed, a majority of the Senators serving having voted therefor.

Senator Kelly moved that the bill be taken by the Yeas and Nays. The motion did not prevail.

add sections 955, 2912b, 2912f,

ee of the Whole:

MITATION ON DAMAGES FOR  
LL NOT BE LESS THAN THE  
E IMMEDIATELY PRECEDING

. CORPORATION SHALL, AS A  
HIBIT OR DISCOURAGE AN  
ACTION. VIOLATION OF THIS  
0."

the following circumstances:

g bills of the 87th Legislature are

tee of the Whole and the bill as

bill, now on the order of Third

and moved that the statement be

ish to tell my fellow members of  
au, who has been working for the  
to Bill Snow, the Secretary of the  
oved to Pinckney and Debi wants  
nt to the President of the Korex  
been a very loyal and exceptional  
gets a little dark and gray around  
join me in wishing Debi the very

e Harrison Roadhouse, beginning  
ebi and I would like to wish her  
estibule for those of us who are

By unanimous consent the Senate proceeded to the order of  
**Third Reading of Bills**

By unanimous consent the Senate proceeded to consideration of the following bill:

**Senate Bill No. 270, entitled**

A bill to amend sections 1483, 2169, 2912a, 2912d, 2912e, 5838a, 5851, 5856, and 6013 of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judicature act of 1961," sections 1483, 2169, 2912d, 2912e, and 5838a as added and section 5851 as amended by Act No. 178 of the Public Acts of 1986 and section 6013 as amended by Act No. 50 of the Public Acts of 1987, being sections 600.1483, 600.2169, 600.2912a, 600.2912d, 600.2912e, 600.5838a, 600.5851, 600.5856, and 600.6013 of the Michigan Compiled Laws; and to add sections 955, 2912b, 2912f, and 2912g.

The above bill was read a third time.

The question being on the passage of the bill,

Senator Kelly offered the following amendments:

1. Amend page 9, line 21, after "SEC. 2912B." by inserting "(1)".
2. Amend page 10, following line 6, by inserting:

"(2) IN ORDER TO ALLEVIATE THE SITUATION DESCRIBED IN SUBSECTION (1), THE DEPARTMENT OF SOCIAL SERVICES SHALL DEVELOP AND IMPLEMENT A PROGRAM TO ENCOURAGE PHYSICIANS TO PRACTICE IN HEALTH RESOURCE SHORTAGE AREAS, PURSUANT TO THIS SUBSECTION. THE DEPARTMENT OF SOCIAL SERVICES SHALL DEVELOP CRITERIA FOR THE IDENTIFICATION AND DESIGNATION OF A GEOGRAPHIC AREA, POPULATION GROUP, OR HEALTH FACILITY IN THIS STATE AS A HEALTH RESOURCE SHORTAGE AREA. THE DEPARTMENT OF SOCIAL SERVICES MAY USE THE SAME CRITERIA DEVELOPED BY THE DEPARTMENT OF PUBLIC HEALTH UNDER SECTION 2717 OF THE PUBLIC HEALTH CODE, ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SECTION 333.2717 OF THE MICHIGAN COMPILED LAWS, OR MAY DESIGNATE THE SAME HEALTH RESOURCE SHORTAGE AREAS AS DESIGNATED BY THE DEPARTMENT OF PUBLIC HEALTH UNDER THAT SECTION. THE DEPARTMENT OF SOCIAL SERVICES SHALL PROMPTLY SEEK A WAIVER UNDER SECTION 1915 OF THE SOCIAL SECURITY ACT, 42 U.S.C. 1396n, IN ORDER TO USE MEDICAID FUNDS TO SUBSIDIZE PHYSICIANS WHO AGREE TO PRACTICE IN HEALTH RESOURCE SHORTAGE AREAS BY PAYING PART OF THEIR PROFESSIONAL LIABILITY INSURANCE PREMIUMS. THE DEPARTMENT OF SOCIAL SERVICES SHALL NOT PAY TO A PHYSICIAN UNDER THIS PROGRAM MORE THAN THE DIFFERENCE BETWEEN THE AVERAGE PREMIUM PAID STATEWIDE FOR THE PHYSICIAN'S MEDICAL SPECIALTY AND THE RATE SET BY THE INSURANCE COMMISSIONER FOR THAT MEDICAL SPECIALTY. THE DEPARTMENT OF SOCIAL SERVICES MAY PROMULGATE RULES UNDER THE ADMINISTRATIVE PROCEDURES ACT OF 1969, ACT NO. 306 OF THE PUBLIC ACTS OF 1969, BEING SECTIONS 24.201 TO 24.328 OF THE MICHIGAN COMPILED LAWS, TO IMPLEMENT THIS SUBSECTION. THE RULES MAY INCLUDE, BUT ARE NOT LIMITED TO, THE TOTAL ANNUAL AMOUNT OF GRANTS TO BE MADE UNDER THE PROGRAM, THE LIMIT ON INDIVIDUAL GRANTS, APPLICATION PROCEDURES, CONDITIONS OF SERVICE OBLIGATIONS UNDER THE PROGRAM, AND THE ASSIGNMENT OF PARTICIPATING PHYSICIANS TO HEALTH RESOURCE SHORTAGE AREAS. AS USED IN THIS SUBSECTION, "MEDICAID" MEANS BENEFITS UNDER THE PROGRAM OF MEDICAL ASSISTANCE ESTABLISHED UNDER TITLE XIX OF THE SOCIAL SECURITY ACT, CHAPTER 531, 49 STAT. 620, 42 U.S.C. 1396 TO 1396g AND 1396i TO 1396u, AND ADMINISTERED BY THE DEPARTMENT OF SOCIAL SERVICES UNDER THE SOCIAL WELFARE ACT, ACT NO. 280 OF THE PUBLIC ACTS OF 1939, BEING SECTIONS 400.1 TO 400.119B OF THE MICHIGAN COMPILED LAWS."

The amendments were seconded.

Senator Arthurhultz moved that rule 2.106 be suspended to allow the Committee on Natural Resources and Environmental Affairs to meet during Senate session.

The motion prevailed, a majority of the Senators serving having voted therefor.

Senator Kelly moved that the rule 3.402 be suspended and that all amendments submitted to Senate Bill No. 270 be considered seconded.

The motion prevailed, a majority of the Senators serving having voted therefor.

Senator Kelly moved that rule 3.504 be suspended and that the vote on all amendments submitted to Senate Bill No. 270 be taken by the Yeas and Nays.

The motion did not prevail, a majority of the Senators serving not having voted therefor.

The question being on the adoption of the amendments,  
The amendments were not adopted, a majority of the Senators serving not having voted therefor.  
Senator Kelly requested the yeas and nays.  
The yeas and nays were ordered, 1/5 of the Senators present having voted therefor.  
The Senators voted as follows:

## Roll Call No. 40

Yeas—15

Berryman  
Cherry  
Dillingham  
Dingell

Faust  
Hart  
Honigman  
Kelly

Koivisto  
Miller  
O'Brien  
Pollack

Smith  
Stabenow  
Vaughn

Arthurhultz  
Bouchard  
Cisky  
Conroy  
DeGrow

Di  
Dt  
Eh  
Er  
G:

Faxon

H:

Nays—19

Arthurhultz  
Bouchard  
Carl  
Cisky  
Conroy

DeGrow  
DiNello  
Dunaskiss  
Ehlers  
Emmons

Gast  
Geake  
McManus  
Posthumus  
Pridnia

Schwarz  
Van Regenmorter  
Wartner  
Welborn

The amendment was not adopted,  
Senators Smith and Carl offered t  
1. Amend page 1, line 1, by strik  
"Section 1. Sections 1483, 2  
Public Acts of 1961, sections 14  
Act No.178 of the Public Acts of 1  
sections 600.1483, 600.2169, 600.2  
Michigan Compiled Laws, are ame  
2. Amend page 2, line 7, by stril  
The amendments were not adopte  
Senator Smith requested the yeas  
The yeas and nays were ordered,  
The Senators voted as follows:

Excused—2

Faxon

Holmes

Not Voting—0

The amendments were not adopted, a majority of the Senators serving not having voted therefor.  
Senators Stabenow and Dillingham offered the following amendment:

1. Amend page 4, line 10, after "Sec. 1483," by striking out all of subsection (1) and inserting:  
"(1) In an action for damages alleging medical malpractice against a person or party specified in section 5838a,  
damages for noneconomic loss ~~which exceeds~~ THAT EXCEED ~~\$225,000.00~~ \$350,000.00 shall not be awarded unless  
1 or more of the following circumstances exist:

(a) There has been a death OR DIMINISHED PROGNOSIS SUCH THAT DEATH IS LIKELY TO OCCUR  
BEFORE NORMAL LIFE EXPECTANCY.

(b) PERMANENT DISABILITY LIMITED TO THAT RESULTING FROM INJURY CAUSING BLINDNESS,  
DEAFNESS, LOSS OF LIMB, INJURY TO THE BRAIN, SPINAL CORD, OR CARDIOVASCULAR SYSTEM.

(c) PERMANENT LOSS OR DAMAGE TO A REPRODUCTIVE ORGAN.

(2) IN THOSE CASES WHERE 1 OF THE ABOVE CIRCUMSTANCES EXIST, DAMAGES FOR  
NONECONOMIC LOSS THAT EXCEED \$1,000,000.00 SHALL NOT BE AWARDED." and renumbering the  
remaining subsections.

The question being on the adoption of the amendment,  
Senator Stabenow requested the yeas and nays.  
The yeas and nays were ordered, 1/5 of the Senators present having voted therefor.  
The Senators voted as follows:

## Roll Call No. 41

Yeas—15

Berryman  
Carl  
Cherry  
Dillingham

Dingell  
Faust  
Hart  
Honigman

Kelly  
Miller  
O'Brien  
Pollack

Smith  
Stabenow  
Vaughn

Faxon

## Roll Call No. 42

Arthurhultz  
Berryman  
Carl  
Cherry  
Dillingham

I  
I  
I  
I  
I

Bouchard  
Cisky  
Conroy  
DeGrow  
DiNello

## Nays—19

refor.

Arthurhultz  
Bouchard  
Cisky  
Conroy  
DeGrow

DiNello  
Dunaskiss  
Ehlers  
Emmons  
Gast

Geake  
Koivisto  
McManus  
Posthumus  
Pridnia

Schwarz  
Van Regenmorter  
Wartner  
Welborn

## Excused—2

Smith  
Stabenow  
Vaughn

Faxon

Holmes

## Not Voting—0

Schwarz  
Van Regenmorter  
Wartner  
Welborn

The amendment was not adopted, a majority of the Senators serving not having voted therefor.  
Senators Smith and Carl offered the following amendments:

1. Amend page 1, line 1, by striking out all of enacting section 1 and inserting:

"Section 1. Sections 1483, 2169, 2912a, 2912d, 2912e, 5838a, 5851, 5856, and 6013 of Act No. 236 of the Public Acts of 1961, sections 1483, 2169, 2912d, 2912e, and 5838a as added and section 5851 as amended by Act No. 178 of the Public Acts of 1986 and section 6013 as amended by Act No. 50 of the Public Acts of 1987, being sections 600.1483, 600.2169, 600.2912a, 600.2912d, 600.2912e, 600.5838a, 600.5851, 600.5856, and 600.6013 of the Michigan Compiled Laws, are amended and sections 2912b, 2912f, and 2912g are added to read as follows:"

2. Amend page 2, line 7, by striking out all of section 955.

The amendments were not adopted, a majority of the Senators serving not having voted therefor.

Senator Smith requested the yeas and nays.

The yeas and nays were ordered, 1/5 of the Senators present having voted therefor.

The Senators voted as follows:

## Roll Call No. 42

## Yeas—17

refor.

ting:  
pecified in section 5838a,  
all not be awarded unless

IS LIKELY TO OCCUR

CAUSING BLINDNESS,  
SCULAR SYSTEM.IST, DAMAGES FOR  
)" and renumbering the

Arthurhultz  
Berryman  
Carl  
Cherry  
Dillingham

Dingell  
Faust  
Hart  
Honigman

Kelly  
Miller  
O'Brien  
Pollack

Smith  
Stabenow  
Vaughn  
Welborn

## Nays—17

Bouchard  
Cisky  
Conroy  
DeGrow  
DiNello

Dunaskiss  
Ehlers  
Emmons  
Gast

Geake  
Koivisto  
McManus  
Posthumus

Pridnia  
Schwarz  
Van Regenmorter  
Wartner

## Excused—2

Smith  
Stabenow  
Vaughn

Faxon

Holmes

## Not Voting—0

The amendments were not adopted, a majority of the Senators serving not having voted therefor.

Senator Kelly offered the following amendment:

1. Amend page 13, following line 9, by inserting:

"(3) UPON THE PLAINTIFF'S MOTION, IF A COURT FINDS THAT A DEFENSE TO A MALPRACTICE ACTION WAS FRIVOLOUS OR OFFERED SOLELY FOR THE PURPOSE OF DELAY, THE COURT SHALL SANCTION THE DEFENDANT'S ATTORNEY BY IMPOSING A FINE EQUAL TO 100% OF THE COMPENSATION DUE TO THE DEFENDANT'S ATTORNEY."

The question being on the adoption of the amendment,

Senator Cherry requested the yeas and nays.

The yeas and nays were ordered, 1/5 of the Senators present having voted therefor.

The Senators voted as follows:

## Roll Call No. 43

Yeas—15

Berryman  
Carl  
Cherry  
Dillingham

Dingell  
Faust  
Hart  
Honigman

Kelly  
Miller  
O'Brien  
Pollack

Smith  
Stabenow  
Vaughn

Nays—19

Arthurhultz  
Bouchard  
Cisky  
Conroy  
DeGrow

DiNello  
Dunaskiss  
Ehlers  
Emmons  
Gast

Geake  
Koivisto  
McManus  
Posthumus  
Pridnia

Schwarz  
Van Regenmorter  
Wartner  
Welborn

Excused—2

Faxon

Holmes

Not Voting—0

The amendment was not adopted, a majority of the Senators serving not having voted therefor.

Senator Kelly offered the following amendments:

1. Amend page 5, line 24, by inserting "if the defendant is a specialist,".

2. Amend page 5, line 26, after "is" by inserting "or was a physician".

3. Amend page 5, line 26, after "licensed" by striking out the balance of the line through "PROFESSIONAL" on page 6, line 1, and inserting "to practice medicine or osteopathic medicine and surgery or a dentist licensed to practice dentistry".

4. Amend page 6, line 2, after "meets" by inserting "both of".

5. Amend page 6, line 4, after "(a)" by striking out the balance of the line through "SPECIALIZES" on line 5 and inserting "Specializes, or specialized".

6. Amend page 6, line 7, after "specialty" by inserting "or a related, relevant area of medicine or osteopathic medicine and surgery or dentistry".

7. Amend page 6, line 9, after "specialist" by inserting "who is the defendant in the medical malpractice action".

8. Amend page 6, line 10, after "action" by striking out the balance of the subdivision and inserting a period.

9. Amend page 6, line 15, after "(b)" by striking out the balance of the line through "DATE" on line 16 and inserting "Devotes, or devoted at the time".

10. Amend page 6, line 17, after "action," by striking out "DEVOTED NOT LESS THAN 80%" and inserting "a substantial portion".

11. Amend page 6, line 19, after "to"

12. Amend page 6, line 19, after "th  
"active clinical practice of medicine c  
-or to the SAME HEALTH PROF  
DEFENDANT IS A SPECIALIST. TH

13. Amend page 6, line 25, after "ac  
school, osteopathic medical school, or  
the specialist who is the defendant in t

14. Amend page 7, line 6, by striking

The question being on the adoption

Senator Cherry requested the yeas a

The yeas and nays were ordered, 1/5

The Senators voted as follows:

## Roll Call No. 44

Berryman  
Carl  
Cherry  
Dillingham

Din  
Fau  
Har  
Hon

Arthurhultz  
Bouchard  
Cisky  
Conroy  
DeGrow

DiN  
Dur  
Ehl  
Em  
Gas

Faxon

Ho

The amendments were not adopted

Senator Dingell offered the follow

1. Amend page 9, line 21, after "(1)

"(1) EVERY LICENSED ALL  
PODIATRIST MUST OBTAIN PRO

LESS THAN \$100,000.00 FOR EAC

(2) NO HOSPITAL LICENSED

CONTINUE THE PRIVILEGES C

SECURE THE REQUIRED INSU

HOSPITAL ANNUALLY ON A FO

(3) THE INSURANCE REQUI

RELATED ACTS OR OMISSIONS,

(4) IF SECTION 1483 IS FOUNI

OR THE MICHIGAN CONSTITU

EFFECT".

The question being on the adoptio

Senator Cherry requested the yea

The yeas and nays were ordered,

The Senators voted as follows:

[February 18, 1993

No. 12]

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efor.

TO A MALPRACTICE  
THE COURT SHALL  
L TO 100% OF THE

11. Amend page 6, line 19, after "to" by striking out "EITHER OR BOTH OF".

12. Amend page 6, line 19, after "the" by striking out the balance of the line through "(ii)" on line 25 by inserting "active clinical practice of medicine or osteopathic medicine and surgery or the active clinical practice of dentistry ~~or to~~ the SAME HEALTH PROFESSION IN WHICH THE DEFENDANT IS LICENSED AND, IF THE DEFENDANT IS A SPECIALIST, THE ACTIVE CLINICAL PRACTICE OF THAT SPECIALTY."

13. Amend page 6, line 25, after "accredited" by striking out the balance of the subdivision and inserting "medical school, osteopathic medical school, or dental school in the same specialty; or a related, relevant area of health care as the specialist who is the defendant in the medical malpractice action."

14. Amend page 7, line 6, by striking out all of subdivision (C).

The question being on the adoption of the amendments,

Senator Cherry requested the yeas and nays.

The yeas and nays were ordered, 1/5 of the Senators present having voted therefor.

The Senators voted as follows:

Roll Call No. 44

Yeas—16

Smith  
Stabenow  
Vaughn

Berryman  
Carl  
Cherry  
Dillingham

Dingell  
Faust  
Hart  
Honigman

Kelly  
Koivisto  
Miller  
O'Brien

Pollack  
Smith  
Stabenow  
Vaughn

Nays—18

Schwarz  
Van Regenmorter  
Wartner  
Welborn

Arthurhultz  
Bouchard  
Cisky  
Conroy  
DeGrow

DiNello  
Dunaskiss  
Ehlers  
Emmons  
Gast

Geake  
McManus  
Posthumus  
Pridnia

Schwarz  
Van Regenmorter  
Wartner  
Welborn

Excused—2

Faxon

Holmes

Not Voting—0

The amendments were not adopted, a majority of the Senators serving not having voted therefor.

Senator Dingell offered the following amendment:

1. Amend page 9, line 21, after "SEC. 2912B." by striking out the balance of the section and inserting:

"(1) EVERY LICENSED ALLOPATHIC AND OSTEOPATHIC PHYSICIAN OR SURGEON, DENTIST, AND PODIATRIST MUST OBTAIN PROFESSIONAL LIABILITY INSURANCE ANNUALLY IN AN AMOUNT NOT LESS THAN \$100,000.00 FOR EACH INDIVIDUAL AND \$200,000.00 FOR EACH INCIDENT.

(2) NO HOSPITAL LICENSED UNDER THE PUBLIC OR MENTAL HEALTH CODES SHALL GRANT OR CONTINUE THE PRIVILEGES OF ANY HEALTH PROFESSIONAL DESCRIBED HEREIN WHO FAILS TO SECURE THE REQUIRED INSURANCE. PROOF OF SUCH INSURANCE MUST BE FURNISHED TO THE HOSPITAL ANNUALLY ON A FORM TO BE APPROVED BY THE INSURANCE COMMISSIONER.

(3) THE INSURANCE REQUIRED HEREIN MUST PROVIDE COVERAGE NOT ONLY FOR HOSPITAL RELATED ACTS OR OMISSIONS, BUT FOR OFFICE RELATED ACTS OR OMISSIONS AS WELL.

(4) IF SECTION 1483 IS FOUND TO BE IN VIOLATION OF EITHER THE UNITED STATES CONSTITUTION OR THE MICHIGAN CONSTITUTION OF 1963 THEN THIS SECTION SHALL NO LONGER REMAIN IN EFFECT."

The question being on the adoption of the amendment,

Senator Cherry requested the yeas and nays.

The yeas and nays were ordered, 1/5 of the Senators present having voted therefor.

The Senators voted as follows:

efor.

igh "PROFESSIONAL" on  
dentist licensed to practice

ECIALIZES" on line 5 and

of medicine or osteopathic

ical malpractice action".

nd inserting a period.

gh "DATE" on line 16 and

IAN 80%" and inserting "a

## Roll Call No. 45

Yeas—14

Berryman  
Cherry  
Dillingham  
Dingell

Faust  
Hart  
Honigman  
Kelly

Miller  
O'Brien  
Pollack

Smith  
Stabenow  
Vaughn

Nays—20

Arthurhultz  
Bouchard  
Carl  
Cisky  
Conroy

DeGrow  
DiNello  
Dunaskiss  
Ehlers  
Emmons

Gast  
Geake  
Koivisto  
McManus  
Posthumus

Pridnia  
Schwarz  
Van Regenmorter  
Wartner  
Welborn

Excused—2

Faxon

Holmes

Not Voting—0

The amendment was not adopted, a majority of the Senators serving not having voted therefor.

Senator Cherry offered the following amendment:

1. Amend page 9, line 21, after "SEC. 2912B." by inserting "ALL MEDICAL MALPRACTICE INSURERS SHALL REDUCE THE RATES THEY CHARGE HEALTH CARE PROFESSIONALS NOT LESS THAN 20%."

The question being on the adoption of the amendment,

Senator Cherry requested the yeas and nays.

The yeas and nays were ordered, 1/5 of the Senators present having voted therefor.

The Senators voted as follows:

## Roll Call No. 46

Yeas—15

Berryman  
Cherry  
Conroy  
Dillingham

Dingell  
Faust  
Hart  
Kelly

Koivisto  
Miller  
O'Brien  
Pollack

Smith  
Stabenow  
Vaughn

Nays—18

Arthurhultz  
Bouchard  
Carl  
Cisky  
DeGrow

DiNello  
Dunaskiss  
Ehlers  
Emmons  
Gast

Geake  
McManus  
Posthumus  
Pridnia

Schwarz  
Van Regenmorter  
Wartner  
Welborn

Excused—2

Faxon

Holmes

Not Voting—1

Honigman

The amendment was not adopted. Senator Pollack offered the following amendment:  
1. Amend page 18, line 23, after "described" and inserting "described as follows:"  
The amendment was adopted, Senator Cherry offered the following amendment:  
1. Amend page 9, line 21, after "SEC. 2912B." by inserting "ALL MEDICAL MALPRACTICE INSURERS SHALL REDUCE THE RATES THEY CHARGE HEALTH CARE PROFESSIONALS NOT LESS THAN 20%."  
(2) IF IMPLEMENTATION OF SECTION SHALL NOT REMAIN IN JURISDICTION.  
(3)".

The amendment was adopted, Senator Kelly offered the following amendment:  
1. Amend page 1, line 1, by inserting "Section 1. Sections 148: Public Acts of 1961, sections 148:178 of the Public Acts of 1986, 600.1483, 600.2169, 600.291: Michigan Compiled Laws, are amended to read as follows:"

2. Amend page 4, line 14, after "OF THE EXISTENCE OF THIS CARE PROVIDER. EXCEPT A"

3. Amend page 16, following "SEC. 2912H. IN AN ACTION THAT THE DISCOVERY OF THE BY THE FRAUDULENT CO PRESUMPTION OF NEGLIGENCE SHALL INSTRUCT THE JURY SECTION OR, IF THE ACTION REBUTTABLE PRESUMPTION THE DISCOVERY OF THE PREVENTED BY THE FRAUDULENT ENTITLED TO TREBLE DAMAGES"

The question being on the adoption of the amendment, Senator Kelly withdrew the amendment.  
The question being on the passage of the amendment,

## Roll Call No. 47

Arthurhultz  
Berryman  
Bouchard  
Cherry  
Cisky  
Conroy

Carl  
Dillingham  
Dingell

Faxon

ary 18, 1993

The amendment was not adopted, a majority of the Senators serving not having voted therefor.

Senator Pollack offered the following amendment:

1. Amend page 18, line 23, after "circumstances" by striking out the balance of the line through "MADE" on page 19, line 1 and inserting "described in subsection (2)(a) ~~to (e)~~ OR (B)".

The amendment was adopted, a majority of the Senators serving having voted therefor.

Senator Cherry offered the following amendment:

1. Amend page 9, line 21, after "SEC. 2912B." by inserting "(1) ALL MEDICAL MALPRACTICE INSURERS SHALL REDUCE THE RATES THEY CHARGE HEALTH CARE PROFESSIONALS BY NOT LESS THAN 20%."
- (2) IF IMPLEMENTATION OF THIS ACT IS STAYED BY STATE COURT THEN THE PROVISIONS OF THIS SECTION SHALL NOT REMAIN IN EFFECT UNTIL FURTHER ORDER OF A COURT OF COMPETENT JURISDICTION.

(3)".

The amendment was adopted, a majority of the Senators serving having voted therefor.

Senator Kelly offered the following amendments:

1. Amend page 1, line 1, by striking out all of enacting section 1 and inserting:

"Section 1. Sections 1483, 2169, 2912a, 2912d, 2912e, 5838a, 5851, 5856, and 6013 of Act No. 236 of the Public Acts of 1961, sections 1483, 2169, 2912d, 2912e, and 5838a as added and section 5851 as amended by Act No. 178 of the Public Acts of 1986 and section 6013 as amended by Act No. 50 of the Public Acts of 1987, being sections 600.1483, 600.2169, 600.2912a, 600.2912d, 600.2912e, 600.5838a, 600.5851, 600.5856, and 600.6013 of the Michigan Compiled Laws, are amended and sections 955, 2912b, 2912f, 2912g, and 2912h are added to read as follows:"

2. Amend page 4, line 14, after "awarded" by striking out the period and inserting "UNLESS THE DISCOVERY OF THE EXISTENCE OF THE CLAIM WAS PREVENTED BY THE FRAUDULENT CONDUCT OF A HEALTH CARE PROVIDER. EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION,".

3. Amend page 16, following line 15, by inserting:

"SEC. 2912H. IN AN ACTION ALLEGING MEDICAL MALPRACTICE, IF THE PLAINTIFF ALLEGES THAT THE DISCOVERY OF THE EXISTENCE OF THE MEDICAL MALPRACTICE CLAIM WAS PREVENTED BY THE FRAUDULENT CONDUCT OF A HEALTH CARE PROVIDER, THERE ARISES A REBUTTABLE PRESUMPTION OF NEGLIGENCE ON THE PART OF THE DEFENDANT IN THE ACTION. THE COURT SHALL INSTRUCT THE JURY REGARDING THE REBUTTABLE PRESUMPTION ARISING UNDER THIS SECTION OR, IF THE ACTION IS NOT TRIED BEFORE A JURY, SHALL TAKE JUDICIAL NOTICE OF THE REBUTTABLE PRESUMPTION ARISING UNDER THIS SECTION. IF THE COURT OR THE JURY FINDS THAT THE DISCOVERY OF THE EXISTENCE OF THE MEDICAL MALPRACTICE CLAIM WAS IN FACT PREVENTED BY THE FRAUDULENT CONDUCT OF A HEALTH CARE PROVIDER, THEN THE PLAINTIFF IS ENTITLED TO TREBLE DAMAGES IN THE UNDERLYING MEDICAL MALPRACTICE ACTION."

The question being on the adoption of the amendment.

Senator Kelly withdrew the amendments.

The question being on the passage of the bill, the Senators voted as follows:

## Roll Call No. 47

## Yeas—23

Arthurhultz  
Berryman  
Bouchard  
Cherry  
Cisky  
Conroy

DeGrow  
DiNello  
Dunaskiss  
Ehlers  
Emmons  
Faust

Gast  
Geake  
Koivisto  
McManus  
O'Brien  
Posthumus

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Van Regenmorter  
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nmortor

## Nays—11

Carl  
Dillingham  
Dingell

Hart  
Honigman  
Kelly

Miller  
Pollack  
Smith

Stabenow  
Vaughn

## Excused—2

Faxon

Holmes

ERS SHALL

## Not Voting—0

The bill was passed, a majority of the Senators serving having voted therefor.  
The Senate agreed to the title of the bill.

## Protests

Senators Pollack, Dillingham and Dingell under their constitutional right of protest (Art. IV, Sec. 18), protested against the passage of Senate Bill No. 270.

Senator Pollack's statement is as follows:

I voted "no" on Senate Bill No. 270 because it is an attack upon the rights of those who are already damaged through no fault of their own. Medical malpractice does occur, it actually occurs in patterns by a small number of physicians who are either incompetent or substance abusers. This bill does not distinguish those who are truly and greatly victimized from those who would falsely accuse a practicing physician of malpractice. Due to the loss of rights to present evidence with qualified witnesses, due to what I consider an unjustifiably short statute of limitations and other provisions of this act, I felt I could not support it.

Senators Dillingham and Dingell moved that the statements they made during the discussion of the bill be printed as their reasons for voting "no."

The motion prevailed.

Senator Dillingham's first statement is as follows:

First of all, I rise to support the amendment. I, too, voted for the bill last year and very frankly, the way the bill was being proposed to me last year was, "Let's move the process along so we can continue the discussion." One of the things that has troubled me this year and certainly, I think, makes it more important that we look carefully at the amendments in the Senate, is because I would hope that we all want to see medical malpractice resolved in this session—not just move a bill over to the House for some type of political purpose. That being the case, and I'm certainly going to assume that we're trying to solve a problem here, then it seems to me what the Senate ought to be open to is amendments that are trying very much to reach a compromise, as this amendment is attempting to do. It could be argued, and I bought the argument, that not having a cap on non-economic damages is impossible to rate. It is impossible to establish a cost for that. If you buy that approach, which is exactly what I've done—as I said earlier, I have not liked caps in the past, but I have bought in to supporting a cap—the question is: Is what is being proposed in this bill reasonable? And I would suggest to you that it is not reasonable. It is not reasonable because, in fact, what is being proposed is a cut over what we have today and the cap that is there in existing law. Plus it is a major change of seven different areas that are exempt from the cap in current law and what this bill does is it eliminates the exemptions and actually cuts the existing cap.

Now, I really consider my vote today a vote trying to resolve a problem. And in the legislative process, trying to resolve a problem means that you look reasonably at establishing reasonable compromise, reasonable public policy. And it seems to me that we should be looking at the impact; the impact that this amendment is going to have. What you are saying is that there is no particular value to the non-economic—not the pain and suffering—the non-economic injuries that can occur such as sterility, such as blindness, deafness and the losing of other senses, the permanent loss of a limb. These are not things that shouldn't be considered very seriously. What you are saying is that there is absolutely no greater value to the very things that provide reasonable quality of life. Reasonable quality of life, that there is absolutely no value to that beyond an economic settlement capped at \$250,000.

What you have to look at is the victims. Who is most victimized by this type of situation? And it is quite obvious. It's elderly people, it's women and it's children. And as a result of that, what you're saying in the development of this policy is that there is no difference. And what I'm trying to argue to you in support of this amendment is that there clearly is a difference. There clearly is a value to those very things that establish a reasonable quality of life.

I guess for me to just go along for the second year in a row and say, well, we're going to move a bill over to the House. I mean, last year it was done the last part of the session and I think basically, as I said before, more as a political move than a substantive move. Today it's different. We're at the beginning of a session. We've got the opportunity to solve a medical malpractice issue in this session, if we would start acting like a legislative body, deliberating on solutions and working for compromise.

This is the heart of the bill. I really would like to vote for this bill but I can't vote for policy that is deliberately making situations worse, rather than trying to reach a compromise to create good public policy. I urge your support of this amendment. I urge you to thoughtfully consider it, to think about it, not just to blindly slam-dunk something because it appears to be expedient.

Senator Dillingham's second

A year ago I voted after a cc was important to move the bill it was D.O.A. hitting the Ho movement. Some of the things want to send the bill over in tl we know we're going to have main issues that we have kind again negotiate it—and I gues their responsibilities but I'm n

Over the last several years possible to compromise and r as I've tried to look at legislat concerned that what we have these amendments, is to just l somebody harmed, what is th in fact harmed, but if they are it and trying to create that ki several things that I think i individual, causes me conce believe we need malpractice :

Now I'm hopeful that the arguments that have been ma of the needs of people who : bill proceeds, will continue legislation to resolve it? Bec concern in this state over do and urban areas of this state, does this bill solve it? What is not going to bring any im with this? It's something t encourage you to, as I will, us, one that will be negotiat House, but we'll have that support included.

Senator Dingell's stateme

This is similar, but by no put into the bill a requirem well as controls on medica have medical malpractice i golly, they ought to have it to a lot of you and that is b

Now, if an attorney gets feel there is no reason w/ requirement of not less tl particular, would deal with problem of doctors who h circumstance, a doctor wh no coverage from their l recommend it highly to m/

Senator Kelly asked ar printed in the Journal.

The motion prevailed.

Senator Kelly's first sta

I want to save time on t people here are pretty ha developing a record, for t

Senator Dillingham's second statement is as follows:

A year ago I voted after a couple of weeks of delay for this bill. I voted for it basically under the assumption that it was important to move the bill along so that there would be further discussion on it. Well, we all know what happened; it was D.O.A. hitting the House. Now we're being asked again and I've heard there has been this underground movement. Some of the things you are pointing out here are correct; we do need further work here on the bill, but we want to send the bill over in the strongest possible way, which can be interpreted to be the most narrow form because we know we're going to have to further negotiate. Well, that's the same argument I've heard here on the last couple of main issues that we have kind of run through this Senate, all just to move a narrow bill along so that we would once again negotiate it—and I guess that's all right if that's the way the majority of the people in this body want to project their responsibilities but I'm not comfortable with that.

Over the last several years I have been involved in a lot of controversial issues and have certainly tried—wherever possible to compromise and recognize that there are more than one side or one position to an argument. And frankly, as I've tried to look at legislation in the past, I try to look at how the individual is going to be affected. I am very, very concerned that what we have done in the course of this debate and in the course of voting patterns that developed on these amendments, is to just look at the basic positions of special interests as opposed to asking yourself, "If there is somebody harmed, what is the impact of this legislation?" Not trying to pass judgment on whether or not somebody is in fact harmed, but if they are harmed, what is the impact? What is the justice that this bill supports? And in looking at it and trying to create that kind of test for it, certainly through the course of the debate today, and trying to point out several things that I think make this public policy statement very lopsided, and not lopsided in support of the individual, causes me concern, but very frankly strong enough concern to say, certainly at this point, that while I believe we need malpractice reform in this state, I can't support moving this bill on.

Now I'm hopeful that the process will continue to work. I'm hopeful that the House will certainly look at the arguments that have been made here in the Senate today, expand on them and at some point we will see a recognition of the needs of people who are truly victimized as a result of medical malpractice and I hope this legislature, as this bill proceeds, will continue to ask themselves first of all, what is the problem? And what are we doing in this legislation to resolve it? Because, very frankly, I think the problem—and there is a major problem—should be a major concern in this state over doctors in certain specialties not staying in Michigan or practicing, particularly in the rural and urban areas of this state, so that we have good access to medical care throughout the state. There is a problem. But does this bill solve it? What I've listened to in debate today is that this bill, even if it passes in its form as it sets here, is not going to bring any immediate cost relief in probably less than four years. So I mean, are we solving the problem with this? It's something that I certainly am trying to ask myself and I'm trying to look for solutions. I would encourage you to, as I will, follow this debate through the House because we will have hopefully another bill before us, one that will be negotiated without major Senate input because I think we're sending a bill too narrow over to the House, but we'll have that back before us and hopefully at that point there will be a broader base support and my support included.

Senator Dingell's statement is as follows:

This is similar, but by no means the same, as the amendment I had on General Orders. This amendment also would put into the bill a requirement that doctors obtain medical malpractice insurance. What this bill does is provide caps as well as controls on medical malpractice costs. One of the chief reasons why doctors say that sometimes they don't have medical malpractice insurance is, by golly, because it costs too much. If we're going to make it affordable, by golly, they ought to have it. The reasons this situation is of concern to me is probably the same reason it is of concern to a lot of you and that is because some of my constituents have come to me to complain about being stiffed.

Now, if an attorney gets a malpractice judgment against them, they can't practice law; they get their license lifted. I feel there is no reason why doctors should be treated any differently. This particular amendment provides for a requirement of not less than \$100,000 for each individual and \$200,000 for each incident. This amendment, in particular, would deal with the kind of problem which is the one which constituents have brought to me and that is the problem of doctors who have insurance through a hospital but not for their separate medical office. In that kind of circumstance, a doctor who commits medical malpractice in their medical office, separate from the hospital, will have no coverage from their hospital policy and their patients would, frankly, not have much to claim, probably. I recommend it highly to my colleagues.

Senator Kelly asked and was granted unanimous consent to make statements and moved that the statements be printed in the Journal.

The motion prevailed.

Senator Kelly's first statement is as follows:

I want to save time on the following debate. I think we've gone through most of the merits on the issue. I think most people here are pretty hardened as to what their perspective is on this legislation. But it's not going to stop me from developing a record, for the people of my district, and for the physicians of this state, and the victims of malpractice

in this state, who want to know what transpired here today. What we have is a situation in this legislature, where for the past decade, the representatives of the people have been asked to make changes in our medical malpractice system in Michigan. Governor Blanchard asked the former President of the University of Michigan, Robin Fleming, an individual with a bias towards the medical profession, to do a study on the so-called crises in this state. President Fleming came back and indeed did make recommendations as to how to improve the medical malpractice system in Michigan. What he found out was, there were three areas of required reform. One was on the part of the legal system, the second was on the part of the medical profession, and the third was on the part of the insurance system. Now, clearly in 1986 we did address that question, this legislature dealt with the legal portion of Dr. Fleming's report, and we required of those attorneys, who are there merely as representatives of the people, who have suffered from malpractice. As I said, President Fleming came up with three parts to what the crisis is in Michigan. Tort reform, physician accountability and insurance reform. The tort reform involved affidavit of merit being filed in cases. A limitation on frivolous suites, expert witness limits, a reduction in the statute of limitations, the abolition of lump sum payments and setting up structured payments, mandated mediation and the limitation on damages. Members on the other side of the aisle, I supported those reforms, because I was under the belief that in doing so we would be creating an environment in which the premiums in this state would be going down drastically. That the so-called crises, as least as it related to tort reform, would be resolved and that following the resolution of tort reform in the legal system, we would then see greater physician accountability and insurance reform. At least in the later aspect, we would have some facts upon which to base legislation that would follow, because we required the insurance commissioner to do a report each two years, on the premiums and the claims that were made through these insurance companies. So that rather than coming in here and talking anecdotes, talking conversations that have been passed on to us without any supportive empirical documentation, we could all look at a set of figures arrived at by our insurance commissioner that would deal with the facts in this case and armed with those facts we could make some rational choices on what was to follow.

One report was done in 1989 that showed that in fact there was a downward pressure on premiums, but no subsequent report has been done. There are no findings that have preceded this legislation of irrefutable facts, hearing books that they put out like they do in congress so that the public can read and judge for themselves as to the voracity of the claims that are underpinning these particular pieces of legislation. What we are charged instead with here, is without the benefit of accurate information, to sort out the wheat from the chaff, to come to a conclusion without having the necessary pre-determinates there to come to an appropriate conclusion. What I heard and what I read from the testimony that I was not able to hear, but was able to read for those people who did attend hearings or took an interest in legislative process was a great deal of myth that malpractice claims in Michigan are up. When in fact, rather than having the claims go up, the claims have gone down. The high point came in 1986 when there were more than 3,600 claims filed because people wanted to get in before the law changed, before that it averaged around 3,100 cases a year, now it's gone below 2,000, and we find the fact that even though there has been a one-third reduction, there hasn't been a reduction in the premiums to correspond to that. That has not taken place.

Irrespective of that, we find that of the ten most populated states in this country that the malpractice premiums paid by our physicians are lowest of all ten states. It's 8,000 in Michigan versus 12,000 in Texas, so Texas is much higher, but the point is that all of the facts that have been offered in support of this legislation are suspect. Claims are down, premiums are the lowest among the ten most populated states, multi-million dollar awards that are held out there as if this was some kind of victim's lottery system where they were all winners of millions of dollars stuffed away in Swiss bank accounts, don't occur, haven't occurred. Three cases have exceeded a million dollars, so who are these people collecting these multi-million dollar claims we are hearing about? There has been no evidence submitted, there has been no video tape footage shown of someone receiving \$10 million, their attorney taking their fee and taking it to the bank and getting \$3.3 million in small bills and dancing around, drinking champagne, while their clients are being videotaped playing volleyball in the backyard from fake injuries. We don't see any of that, because there isn't any. They can't support it. This is an insurer's piece of legislation. They want to continue to hack away at one part of the triad of reform recommended by Dr. Fleming, which is tort reform, without doing anything for medical reform, without doing anything for insurance reform. But we are being told additionally, that what is occurring in this state, is that the doctors in this state are fleeing because of malpractice insurance.

What I am trying to deal with is what is the crisis and how can we solve it. That program shall encourage physicians to practice and help resource shortage areas pursuant to this subsection. We have been told there is a health care shortage, and that indeed physicians have been leaving this state, when in fact, rather than fleeing this state, the number of active doctors has increased in Michigan from 146 per 100,000 20 years ago to 232 per 100,000 now. By 2010, the number of active physicians is projected to be 272 per 100,000 and that comes from the Office of Health and Medical Affairs and the Department of Management and Budget. But there is a distortion that this amendment seeks to address in the areas where there is a shortage.

My brethren who represent out-state Michigan, the Upper Peninsula, Western mid-Michigan, Western Michigan, where there is a physician shortage like I have in portions of my district that are in Detroit, and those physician shortages are being said to include obstetricians and gynecologists. Where again, coming back to the language of the

the amendment, to encourage from 4.7 per thousand in 1 Management and Budget. I cannot ignore this amendment that we're operating under are. This amendment goes and designation of a geographic area. Now, my colleagues physicians in the state and only operating in suburban in fact, if there is a legislative legislation where 50 percent suburban community is, the

People in this state are the voters in a recent poll we are trying to do with 1 Public Health under a similar legislation. DSS, further 1 the social security act. The Medicaid can be appropriate

This issue is far too important areas in the state. Those who not able to practice in the toward people in the health those individuals, who are premiums over and above totally permissible under amendment does that. If physicians to come in and it is because of malpractice insurance companies and comes straight from the discussed and I find it underlie it.

I want to see an environment together. This amendment malpractice for emergency the testimony, anecdotal an honest reading and in insurance company system read it and to vote their voice

Senator Kelly's second

I just want to point out the reason we offer this He is also well aware, 1 Orders printed in the journal me, I'd be keeping my reason I'm not, there's a people in this state who their families as well, re deliberative process tool like it's so much hambur

Senator Kelly's third

This amendment is to delay the judicial process physicians under their going to have to give up

I would urge the merit amendment and to support

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the amendment, to encourage physicians to practice in the shortage areas, the number of ob/gyn's birth has doubled from 4.7 per thousand in 1964-1965 to 9.4 per thousand in 1987-1988, again documented by our own Department of Management and Budget. These are the myths that we are required to address so that the members who are here today cannot ignore this amendment and our votes on this legislation and go back and tell the people in their constituencies, that we're operating under some erroneous information base because I want this record to be clear as to what the facts are. This amendment goes on to say that the Department of Social Services shall develop criteria for the identification and designation of a geographic area, population group or health facility in the state that is a health resource shortage area. Now, my colleagues have pointed that out. That indeed, they have operated under the belief that there are fewer physicians in the state and, in fact, what we are finding is that there are more physicians than ever before, but they are only operating in suburban areas around this state, rather than in the areas where their services are needed. And that, in fact, if there is a litigation crisis, it only exists in Wayne and Oakland Counties, so we find that we have a piece of legislation where 50 percent of the malpractice claims exist in Wayne and Oakland Counties because that's where the suburban community is, that's where those physicians reside.

People in this state are of the belief, at least two-thirds of the people in this state are of the belief and 63 percent of the voters in a recent poll found there were about the right number of doctors to meet the needs of their area. So what we are trying to do with this legislation is make it so that DSS can use the criteria developed by the Department of Public Health under a similar law to designate the same health resource shortage areas as we would claim with this legislation. DSS, further following this amendment line for line, shall promptly seek a waiver under section 1915 of the social security act. That's the one that the president has allowed the various states to have a waiver of, so that medicaid can be appropriately targeted for what the problems are in the state.

This issue is far too important to allow the individuals who want to obstruct justice to do so. There are under-served areas in the state. Those under-served areas in this state require the attention of physicians and if those physicians are not able to practice in those areas because of malpractice insurance problems, I want to help them. I have no animosity toward people in the health care profession and this amendment is designed to designate those areas in such a way that those individuals, who are having that difficulty can receive state subsidies through our medicaid fund to have their premiums over and above the average premium for a person of that particular specialty paid out of medicaid, which is totally permissible under federal and state law. If, indeed, we are trying to provide rate relief for physicians, this amendment does that. If, indeed, there are legislators from the urban and the rural areas of this state who need physicians to come in and have physicians who have testified and held out to people that the reason they are not doing it is because of malpractice insurance, then this amendment addresses that problem. And it does not do away with the insurance companies and it does not limit the rights of physicians and I am not being dilatory in offering this. This comes straight from the heart and was not fashioned by anyone other than myself. And I have a right to have it discussed and I find it very offensive that my colleagues won't even give me the time to give them the facts that underlie it.

I want to see an environment in this state where physicians and victims of malpractice and the public interest work together. This amendment attempts to address that. This amendment does away with the crisis as it relates to malpractice for emergency room, ob/gyn, family practitioners, anesthesiologists, those who have suffered according to the testimony, anecdotal as it may be, on the other side. I would hope that the membership would give this amendment an honest reading and in that honest reading they will see that this helps the physicians and does not tamper with the insurance company system that we have. This just brings some rationality to the process. I urge the membership to read it and to vote their conscience.

Senator Kelly's second statement is as follows:

I just want to point out to my colleague from the twenty-sixth district, that he's been around long enough to know the reason we offer these on General Orders is, I wanted to get these amendments on and it takes a simple majority. He is also well aware, I believe he's well aware, maybe he's not, that you cannot have your comments on General Orders printed in the journal. There's nothing dilatory about this at all. If my amendments had been adopted, believe me, I'd be keeping my mouth shut right now and just voting on the final version of the bill. But I'm not, and the reason I'm not, there's a lot of other things that have to be considered in this particular legislation. I think we owe the people in this state who are victims of malpractice, people whose whole lives have been destroyed in many cases, and their families as well, reasonable basis for understanding what we talked about; what we did here today. What kind of deliberative process took place. We owe to those victims more than some attempt to quickly run through all this stuff, like it's so much hamburger. We owe people that particular deliberation.

Senator Kelly's third statement is as follows:

This amendment is directly targeted against lawyers who obstruct justice and lawyers who unreasonably hinder or delay the judicial process in coming to a just conclusion. And it is one that I believe benefits both the insurers and the physicians under their particular policies by saying that defense attorneys who unreasonably obstruct that justice are going to have to give up 100 percent of their compensation.

I would urge the members, if they are sincere about doing something about the malpractice crisis, to embrace this amendment and to support it.

Senator Kelly's fourth statement is as follows:

This amendment relates to the language in the bill which attempts to further restrict those individuals who would come in and testify in a particular case as an expert. There is a great fear among the proponents of this legislation that there is too much information being given to the jury; that the expert opinions that are being offered on behalf of claims by victims is too informative for a jury and that's something they fear. The legislation requires that the individual have 80 percent of their practice in an area which involves clinical activity. This includes individuals who, as researchers or as academics, are fully capable of testifying as to a particular malpractice occurrence, who would not be able to make that information available to the court and to a jury. This is clearly wrong. Clearly we do not want to provide less information to juries, but greater information and the array of people who come and testify in court will be judged in cross-examination and will be judged based upon the foundation that they have laid as to the opinions they are about to offer. Whether or not they are clinical practitioners is of real small consequence.

Many people were clinical practitioners at one point in time and now have changed what their view of the profession is or have changed what their actual employment role is and there is no reason to have them precluded from the judicial process. Every person in this country has a right to a fair trial, every person in this country has the right to have a jury listen to the facts. The facts are very subjective and are offered by both sides on a particular piece of litigation. There is no reason to limit what a plaintiff can do. It is unfair and it ties the hands of plaintiff's attorney and is something that is uncalled for and this amendment rectifies that. I urge your adoption of the amendment.

Senator Kelly's fifth statement is as follows:

I urge you at the last moment here to use your better judgment and to take an overview of this particular legislation as to what it's going to mean to the people in your district and the people in this state and how they perceive our system of justice. This bill is a travesty and the process whereby it has been presented to this legislature is almost shameless. We are one of the worst states in the Union when it comes to physician discipline. It is a hard thing to say and not because the facts don't support it. As I tried to point out to this body before, there are almost 550 cases of malpractice that were brought to the attention of the Board of Medicine last year and there were only 33 people who had any action taken against them of any substance. That's wrong. These people who are committing the malpractice are ruining the medical system for everyone. There is absolutely no intent on the part of those who are promoting this legislation to bring those people to accountability. We have done nothing whatsoever in the area of insurance reform. We have done nothing to correct a system that allows insurance companies to make profits of hundreds of millions of dollars, to have a return on premiums estimated to be 32 percent, to bring them to recognize what they are doing to the physicians in this state. That's not fair.

The Insurance Commissioner in this state hasn't even been called upon to provide the facts necessary for us to come to a conclusion that indeed there is a problem. So this legislation is being propelled along, not by facts, not by the interests of the people of this state, certainly not by not considering what has happened to the victims and what it's going to take to restore them to a normal life—it's being propelled along by propaganda that has been unsubstantiated and by individuals who are not motivated by anything other than greed. And that's truly a shameful day for us.

I wish the members would take some time in the period that takes place between this traveling over to the House and being considered before it comes back to us, to reflect upon what we're really trying to do. There has been no substantial change since 1986 and this bill doesn't do anything to rectify the problems and I would hope that the members' conscience today would vote against this legislation.

The Associate President pro tempore assumed the Chair.

By unanimous consent the Senate proceeded to the order of  
**Introduction and Referral of Bills**

Senators Kelly, Berryman, Posthumus, Ehlers and Welborn introduced  
**Senate Joint Resolution H, entitled**

A joint resolution proposing an amendment to the state constitution of 1963, by amending section 12 of article IV, to provide that the state officers compensation commission's determination of certain salaries and expense allowances become effective following the next general election.

The joint resolution was read a first and second time by title and referred to the Committee on Government Operations.

Senator Pridnia introduced  
**Senate Bill No. 403, entitled**

A bill to amend section 14 of Act No. 48 of the Public Acts of 1929, entitled as amended "An act levying a specific tax to be known as the severance tax upon all producers engaged in the business of severing oil and gas from the soil; prescribing the method of collecting the tax; requiring all producers of such products or purchasers thereof to make

The Committee on Judiciary reports back to the Senate the following bill, with a substitute therefor having the same title, recommending that the substitute be agreed to and that the bill, as thus substituted, do pass:

**Senate Bill No. 210, entitled**

A bill to amend section 316 of Act No. 328 of the Public Acts of 1931, entitled as amended "The Michigan penal code," as amended by Act No. 28 of the Public Acts of 1980, being section 750.316 of the Michigan Compiled Laws.

(Substitute (S-1) in bill form.)

The committee further recommends that the bill be given immediate effect.

William Van Regenmorter  
Chairperson

**To Report Out:**

Yeas: Senators Van Regenmorter, DeGrow and Cisky

Nays: None

The bill and the substitute recommended by the committee were referred to the Committee of the Whole.

The Committee on Judiciary reports back to the Senate the following bill, with a substitute therefor, recommending that the substitute be agreed to and that the bill, as thus substituted, do pass:

**Senate Bill No. 270, entitled**

A bill to amend sections 1483, 2169, 2912a, 2912d, 2912e, 5838a, 5851, 5856, and 6013 of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judiciary act of 1961," sections 1483, 2169, 2912d, 2912e, and 5838a as added and section 5851 as amended by Act No. 178 of the Public Acts of 1986 and section 6013 as amended by Act No. 50 of the Public Acts of 1987, being sections 600.1483, 600.2169, 600.2912a, 600.2912d, 600.2912e, 600.5838a, 600.5851, 600.5856, and 600.6013 of the Michigan Compiled Laws; to add sections 955, 2912b, 2912f, 2912g, and 2912h; and to repeal certain parts of the act.

(Substitute (S-2) in bill form.)

The committee further recommends that the bill be given immediate effect.

William Van Regenmorter  
Chairperson

**To Report Out:**

Yeas: Senators Van Regenmorter, DeGrow and Cisky

Nays: None

The bill and the substitute recommended by the committee were referred to the Committee of the Whole.

The Committee on Judiciary reports back to the Senate the following bill, without amendment, and with the recommendation that the bill do pass:

**Senate Bill No. 369, entitled**

A bill to amend section 1 of chapter IX and section 14 of chapter XI of Act No. 175 of the Public Acts of 1927, entitled as amended "The code of criminal procedure," section 1 of chapter IX as amended by Act No. 113 of the Public Acts of 1989 and section 14 of chapter XI as amended by Act No. 88 of the Public Acts of 1985, being sections 769.1 and 771.14 of the Michigan Compiled Laws.

The committee further recommends that the bill be given immediate effect.

William Van Regenmorter  
Chairperson

**To Report Out:**

Yeas: Senators Van Regenmorter, DeGrow and Cisky

Nays: None

The bill was referred to the Committee of the Whole.

**COMMITTEE ATTENDANCE REPORT**

The Committee on Judiciary submits the following:

Meeting held on Tuesday, February 16, 1993, at 1:30 p.m., Rooms 402 and 403, Capitol Building

Present: Senators Van Regenmorter, DeGrow, Cisky and Kelly

Excused: Senator Smith

The Committee on Health Po  
recommendation that the bill do

**Senate Bill No. 337, entitled**

A bill to amend section 2507  
act of 1961," being section 600.

The committee further recom

**To Report Out:**

Yeas: Senators Pridnia, Schw

Nays: None

The bill was referred to the C

The Committee on Health Po  
the amendment be agreed to an

**Senate Bill No. 338, entitled**

A bill to amend sections 85  
procedures act of 1969," sectio  
24.315 of the Michigan Compi

The following is the amendm

1. Amend page 3, line 21, b

"Section 2. This amenda

enacted into law:

(a) Senate Bill No. 337.

(b) Senate Bill No. 339.

(c) Senate Bill No. 340.

(d) Senate Bill No. 341.

(e) Senate Bill No. 342.

(f) Senate Bill No. 343."

The committee further reco

**To Report Out:**

Yeas: Senators Pridnia, Sci

Nays: None

The bill and the amendm

The Committee on Health  
recommendation that the bill

**Senate Bill No. 339, entit**

A bill to amend section 2  
release of certain informatio  
or professions, or certain go

information or data; and to

No. 215 of the Public Acts o

The committee further rec

**To Report Out:**

Yeas: Senators Pridnia, S

Nays: None

The bill was referred to t

The Committee on Healt  
same title, recommending t

**Senate Bill No. 340, ent**

A bill to amend sections  
1927, entitled as amended

Senator Gilbert J. DiNello of the Twenty-sixth Senatorial District offered the following prayer:

Dear Father, as we celebrate the National Day of Prayer today we thank You for the privilege of being able to come to You. Increase our desire to come to You with our needs and the needs of others. We thank You for the gift that You have given to those who believe in the name of Jesus Christ. We praise You that Christ is above every name. We thank You that Your Son, Jesus, is the exalted God of creation. In Jesus' name, amen.

The President, Lieutenant Governor Binsfeld, assumed the Chair.

Senators Pollack and Miller entered the Senate Chamber.

#### Motions and Communications

The Secretary announced the printing and filing in the Document Room on May 4 of:

##### Senate Joint Resolution L

Senate Bills Nos.	585	586	587	588	589	594	596	597	598	599	600	601	602
House Bills Nos.	4677	4678	4679	4680	4681	4682	4683						

Senator Arthurhultz moved that Senators Carl and Geake be temporarily excused from today's session.  
The motion prevailed.

Senator Arthurhultz moved that when the Senate adjourns today, it stand adjourned until Thursday, May 6, at 9:30 a.m.

The motion prevailed.

Senator O'Brien moved that Senators Faxon, Holmes, Smith and Stabenow be temporarily excused from today's session.

The motion prevailed.

Senator Arthurhultz moved that the rule 3.106 be suspended and that the following bill, now on Committee Reports, be placed on the General Orders calendar for consideration today:

##### House Bill No. 4464

The motion prevailed, a majority of the Senators serving having voted therefor.

Senators Smith, Holmes and Geake entered the Senate Chamber.

#### Messages from the House

##### Senate Bill No. 537, entitled

A bill to amend sections 2, 8, 9, 11, and 12 of Act No. 106 of the Public Acts of 1985, entitled "State convention facility development act," being sections 207.2, 207.8, 207.9, 207.631, and 207.632 of the Michigan Compiled Laws. (This bill was returned from the House without amendment on May 4 and the recommendation for immediate effect postponed. See Senate Journal No. 37, p. 1020.)

The question being on concurring in the recommendation of the committee to give the bill immediate effect, The recommendation was concurred in, 2/3 of the Senators serving having voted therefor.

The Senate agreed to the title as amended.

The bill was referred to the Secretary for enrollment printing and presentation to the Governor.

##### Senate Bill No. 270, entitled

A bill to amend sections 1483, 2169, 2912a, 2912d, 2912e, 5838a, 5851, 5856, and 6013 of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judicature act of 1961," sections 1483, 2169, 2912d, 2912e, and

5838a as added and section 5851 as amended by Act No. 50 of the Public Acts of 1960, 5838a, 600.5851, 600.5856, and 600.2912f, and 2912g.

The House of Representatives has substituted (H-2) in bill form.)

The House of Representatives has passed the following:

A bill to amend sections 1483, 2169, the Public Acts of 1961, entitled as amended and jurisdiction of the courts of this state thereof; the forms and attributes of civil be brought in said courts; pleading, evidence in said courts; to provide remedies and parts of acts inconsistent with, or 2912e, 5838a, and 6304 as added and sections 6013 as amended by Act No. 50 of 1960, 2912d, 600.2912e, 600.5838a, 600.2912f, and 2912g, and Pursuant to rule 3.202, the bill was passed.

Senator Stabenow entered the Senate Chamber.

Senator Arthurhultz moved that the motion prevailed, the time being.

The Senate reconvened at the expiration of the recess.

During the recess, Senators Carl and

Senator Arthurhultz moved that the motion prevailed, the time being.

The Senate reconvened at the expiration of the recess.

Senator Arthurhultz moved that the motion prevailed, the time being.

The Senate reconvened at the expiration of the recess.

Senator Arthurhultz moved that the motion prevailed.

[May 5, 1993]

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ayer:  
lege of being able to come  
k You for the gift that You  
ove every name. We thank

5838a as added and section 5851 as amended by Act No. 178 of the Public Acts of 1986 and section 6013 as amended by Act No. 50 of the Public Acts of 1987, being sections 600.1483, 600.2169, 600.2912a, 600.2912d, 600.2912e, 600.5838a, 600.5851, 600.5856, and 600.6013 of the Michigan Compiled Laws; and to add sections 955, 2912b, 2912f, and 2912g.

The House of Representatives has substituted the bill.

(Substitute (H-2) in bill form.)

The House of Representatives has passed the bill as substituted (H-2), and amended the title of the bill to read as follows:

A bill to amend sections 1483, 2169, 2912a, 2912d, 2912e, 5838a, 5851, 5856, 6013, and 6304 of Act No. 236 of the Public Acts of 1961, entitled as amended "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with, or contravening any of the provisions of this act," sections 1483, 2169, 2912d, 2912e, 5838a, and 6304 as added and section 5851 as amended by Act No. 178 of the Public Acts of 1986 and section 6013 as amended by Act No. 50 of the Public Acts of 1987, being sections 600.1483, 600.2169, 600.2912a, 600.2912d, 600.2912e, 600.5838a, 600.5851, 600.5856, 600.6013, and 600.6304 of the Michigan Compiled Laws; to add sections 2912b, 2912f, 2912g, and 2912h; and to repeal certain parts of the act.

Pursuant to rule 3.202, the bill was laid over one day.

Senator Stabenow entered the Senate Chamber.

#### Recess

Senator Arthurhultz moved that the Senate recess until 10:20 a.m.  
The motion prevailed, the time being 9:51 a.m.

The Senate reconvened at the expiration of the recess and was called to order by the President pro tempore, Senator Ehlers.

During the recess, Senators Carl and Faxon entered the Senate Chamber.

#### Recess

Senator Arthurhultz moved that the Senate recess until 10:30 a.m.  
The motion prevailed, the time being 10:20 a.m.

The Senate reconvened at the expiration of the recess and was called to order by the President pro tempore, Senator Ehlers.

#### Recess

Senator Arthurhultz moved that the Senate recess until 10:45 a.m.  
The motion prevailed, the time being 10:30 a.m.

The Senate reconvened at the expiration of the recess and was called to order by the President pro tempore, Senator Ehlers.

Senator Arthurhultz moved that the order of Third Reading of Bills be postponed temporarily.  
The motion prevailed.

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ay's session.

until Thursday, May 6, at

rily excused from today's

ow on Committee Reports,

entitled "State convention  
Michigan Compiled Laws.  
ation for immediate effect

immediate effect,

rnor.

13 of Act No. 236 of the  
2169, 2912d, 2912e, and

## Messages from the House

**Senate Bill No. 270, entitled**

A bill to amend sections 1483, 2169, 2912a, 2912d, 2912e, 5838a, 5851, 5856, and 6013 of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judicature act of 1961," sections 1483, 2169, 2912d, 2912e, and 5838a as added and section 5851 as amended by Act No. 178 of the Public Acts of 1986 and section 6013 as amended by Act No. 50 of the Public Acts of 1987, being sections 600.1483, 600.2169, 600.2912a, 600.2912d, 600.2912e, 600.5838a, 600.5851, 600.5856, and 600.6013 of the Michigan Compiled Laws; and to add sections 955, 2912b, 2912f, and 2912g.

(Substitute (H-2) in bill form.)

The question being on concurring in the substitute made to the bill by the House,  
Senator Pollack offered the following amendment to the substitute:

1. Amend page 24, line 15, after "PROCREATE." by striking out the balance of the subdivision.

The question being on the adoption of the amendment to the substitute,

Senator Stabenow requested the yeas and nays.

The yeas and nays were ordered, 1/5 of the Senators present having voted therefor.

The question being on the adoption of the amendment to the substitute,

Senator Arthurhultz moved that further consideration of the bill be postponed temporarily.

The motion prevailed.

Senator Arthurhultz moved that consideration of the following bill be postponed temporarily:

**Senate Bill No. 8**

The motion prevailed.

**Senate Bill No. 533, entitled**

A bill to make appropriations for the department of state police, and certain other state purposes for the fiscal year ending September 30, 1994 and for the fiscal year ending September 30, 1995; to provide for the expenditure of those appropriations; to provide for certain reports and the consideration of those reports; to provide for the disposition of other income received by the various state agencies; to provide testing of certain persons; to provide for certain emergency powers; and to provide for the powers and duties of certain committees, certain state agencies, and certain employees.

(Substitute (H-1) in bill form.)

The question being on concurring in the substitute made to the bill by the House, the Senators voted as follows:

**Roll Call No. 481****Yeas—12**

Berryman  
Cherry  
Conroy

Dingell  
Faxon  
Hart

Miller  
O'Brien  
Pollack

Smith  
Stabenow  
Vaughn

**Nays—21**

Arthurhultz  
Bouchard  
Carl  
Cisky  
Dillingham  
DiNello

Dunaskiss  
Ehlers  
Emmons  
Faust  
Gast

Geake  
Gougeon  
Hoffman  
Koivisto  
McManus

Pridnia  
Schwarz  
Van Regenmorter  
Wartner  
Welborn

**Excused—2**

Holmes

Kelly

DeGrow

The substitute was not concurred in.

Senator Arthurhultz moved that the House return to today's session.

The motion prevailed.

**Senate Bill No. 382, entitled**

A bill to amend the title and section 1 of Act No. 1 of 1961 to provide immunity from civil liability for charitable corporations, organizations, and individuals, sections 4, 5, and 6 as added by Act No. 1 of 1961 of the Michigan Compiled Laws; and to amend the House of Representatives.

The question being on concurring in the substitute,

Senator Arthurhultz moved that the House return to today's session.

The motion prevailed.

By unanimous consent the Senate will return to today's session.

Senator Arthurhultz moved that the House return to today's session.

**Senate Bill No. 345****Senate Bill No. 74****Senate Bill No. 675**

The motion prevailed.

The following bill was read a second time:

**Senate Bill No. 693, entitled**

A bill to amend section 12 of Act No. 1 of 1971, as amended by Act No. 1 of 1971, to provide for the disposition of other income received by the various state agencies; to provide testing of certain persons; to provide for certain emergency powers; and to provide for the powers and duties of certain committees, certain state agencies, and certain employees.

The question being on the passage of the bill,

**Roll Call No. 482**

Arthurhultz  
Bouchard  
Carl  
Cisky  
Conroy

Berryman  
Cherry  
DiNello  
Dingell

## Protest

Senator DiNello, under his constitutional right of protest (Art. IV, Sec. 18), protested against the passage of House Bill No. 4760.

Senator DiNello's statement is as follows:

According to the analysis that I have in front of me today, House Bill No. 4760 was amended to remove the sunset to allow the check-off to continue without expiration. I totally disagree with that amendment. I am not against the check-off for the Non-game Fish and Wildlife Fund. I think that's a good idea. But to let it go on in perpetuity without a sunset provision is something that I objected to, and I don't think it should have been on this bill. As a matter of fact, I think we in this legislature ought to be considering more sunset provisions on some of these bills that we've passed around here so we can review them after a period of time. And I think this bill is going in the wrong direction by taking off the sunset provision in order to review to see exactly how effective it is. So while I agree with the intent of the bill, I disagree with the fact that we took off the check-off provision without any further expiration, and I thought that's the wrong direction to go.

Senator Kelly entered the Senate Chamber.

By unanimous consent the Senate returned to the order of  
Messages from the House

By unanimous consent the Senate returned to consideration of the following bill:

## Senate Bill No. 270, entitled

A bill to amend sections 1483, 2169, 2912a, 2912d, 2912e, 5838a, 5851, 5856, and 6013 of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judicature act of 1961," sections 1483, 2169, 2912d, 2912e, and 5838a as added and section 5851 as amended by Act No. 178 of the Public Acts of 1986 and section 6013 as amended by Act No. 50 of the Public Acts of 1987, being sections 600.1483, 600.2169, 600.2912a, 600.2912d, 600.2912e, 600.5838a, 600.5851, 600.5856, and 600.6013 of the Michigan Compiled Laws; and to add sections 955, 2912b, 2912f, and 2912g.

(This bill was considered earlier today, amendment offered, the yeas and nays ordered and consideration postponed. See p. 1754.)

The question being on the adoption of the amendment offered by Senator Pollack to the substitute, the Senators voted as follows:

## Roll Call No. 502

## Yeas—37

Arthurhultz  
Berryman  
Bouchard  
Carl  
Cherry  
Cisky  
Conroy  
DeGrow  
Dillingham  
DiNello

Dingell  
Dunaskiss  
Ehlers  
Emmons  
Faust  
Faxon  
Gast  
Geake  
Gougeon

Hart  
Hoffman  
Holmes  
Honigman  
Kelly  
Koivisto  
McManus  
Miller  
Pollack

Posthumus  
Pridnia  
Schwarz  
Smith  
Stabenow  
Van Regenmorter  
Vaughn  
Wartner  
Welborn

## Nays—0

## Excused—0

## Not Voting—1

O'Brien

The amendment to the substitute was adopted.

The question being on concurring in the House substitute, as amended, the Senators voted as follows:

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## Roll Call No. 503

Arthurhultz  
Berryman  
Bouchard  
Cisky  
Conroy  
DeGrow  
DiNello

Carl  
Cherry  
Dillingham

The substitute was concurred in.  
The question being on concurring in the House substitute, as amended, the Senators voted as follows:

Senators Kelly, Smith, Stat Sec. 18), protested against concurring in the House substitute, as amended, the Senators Kelly and Cherry gave reasons for voting "no."

The motion prevailed.

Senator Kelly's statement, in part, was:

To members, for the last deal with. When I came here it was a state attempt to intervene in the level of coverage or the type of competition for insurance companies to come to it to the state general fund.

It was an interesting waters information on what's taken repeatedly in legislation and denied access through the copayers who wanted to know a

So operating in total ignorance being put forward for this bill to fundamentally shape the question can't have a good idea and a this piece of legislation is going

There are different types of who they are, rather than the types of penalties to criminal concept. More importantly, it

## Roll Call No. 503

Yeas—27

Arthurhultz	Dingell	Gougeon	Posthumus
Berryman	Dunaskiss	Hart	Pridnia
Bouchard	Ehlers	Hoffman	Schwarz
Cisky	Emmons	Honigman	Van Regenmorter
Conroy	Faust	Koivisto	Wartner
DeGrow	Gast	McManus	Welborn
DiNeillo	Geake	Miller	

Nays—11

Carl	Faxon	O'Brien	Stabenow
Cherry	Holmes	Pollack	Vaughn
Dillingham	Kelly	Smith	

Excused—0

Not Voting—0

The substitute was concurred in, a majority of the Senators serving having voted therefor.  
 The question being on concurring in the recommendation of the committee to give the bill immediate effect,  
 The recommendation was concurred in, 2/3 of the Senators serving having voted therefor.

## Protests

Senators Kelly, Smith, Stabenow, Pollack, Cherry and Carl, under their constitutional right of protest (Art. IV, Sec. 18), protested against concurring in the House substitute, as amended, to Senate Bill No. 270.

Senators Kelly and Cherry moved that the statements they made during the discussion of the bill be printed as their reasons for voting "no."

The motion prevailed.

Senator Kelly's statement, in which Senators Smith and Pollack concurred, is as follows:

To members, for the last decade and a half this has been one of those recurrent issues in Michigan I've first had to deal with. When I came here initially it was the termination of the Brown-McNeely fund and the Brown-McNeely fund was a state attempt to intervene in the marketplace where private insurance companies would no longer provide the level of coverage or the type of coverage that physicians in this state needed. At that time it was determined that there was so much competition for malpractice insurance in Michigan that we would abolish the state fund and allow private insurance companies to come in and provide that insurance. And we would take that surplus and convert a good portion of it to the state general fund and remit some back to the physicians who had been policyholders.

It was an interesting watershed point for us because ever since then we haven't been able to get any real or accurate information on what's taken place in the malpractice insurance premium environment ever since. Now we've asked repeatedly in legislation and in lawsuits and in inquiries what the profitability of those firms were and we've been denied access through the courts and through the insurance commissioners, and voluntarily through the premium payers who wanted to know as well what the true picture on the malpractice environment is in Michigan.

So operating in total ignorance to the facts, operating without any empirical foundation for the arguments that are being put forward for this bill, we're going to tinker with the system. We're going to enact some changes that are going to fundamentally shape the quality of justice for people in this state. This bill is a bad bill. This is a bad idea and we can't have a good idea and a correction until we know, as I said, what all the facts are. But what we do know is that this piece of legislation is going to create what I believe is an unconstitutional, two-tiered system.

There are different types of victims of malpractice who are going to be able to receive differential awards based on who they are, rather than the wrong that was committed. I mean this is analogous in criminal laws in assigning different types of penalties to criminals based upon whether or not the victim of the crime deserved it or not—a ridiculous concept. More importantly, it's a concept that's going to be challenged in the courts. So all of the comments out there

about this being some way to limit what attorneys are going to do, of just giving them a gold mine in terms of future litigation, and believe me, it will be pursued.

It will be pursued because it really does impact on the fundamental rights of every person in this state. We have done something in this legislation that hadn't been contemplated in previous attempts that is ludicrous on its face. Madam President, death is no longer one of those second-tier offenses under this legislation. It becomes a minor consideration in the course of a physician's malpractice, so that even though the person, even though that doctor had a duty that was owed to that particular victim, and even though that doctor may have breached that duty and it results in that person's death, we've now eliminated them from due process that would normally be available to anyone else in our judicial system.

The judges under this system are given the ultimate authority. Our jury process that was established under the United States Constitution is one of those devices to eliminate some of the frustration that people had with unrepresentative government. Juries are eliminated from the equation. Judges now make the threshold decisions. Judges will have inordinate authority to determine who will receive and who will be able to rectify the wrongs that have been committed against them. I can't believe that we want to revert to that monarchical state. I cannot believe that we want to go back in terms of the due process that we offer the citizens of this country, of this state.

What's more important is, if you look at it objectively, if you look at it in the clear and plain meaning of the language in the bill, you are stopping information from going to the people who will be making decisions. We have placed not de minimis burdens on the evidence that may be introduced, but we've created incredible thresholds that will keep from the people who'll decide whether it will be a judge or a jury—the information that may be necessary for them to come to the right conclusion. We have restricted those who may offer evidence in court, those who may speak, regardless of the truth, to a handful of physicians and clinicians who are dependent for their very existence on the people within the medical community. We make it impossible for those who are outside this little conspiracy to be able to come forward and render an objective opinion, even when the wrong is so grievous it may be perceptible to almost anyone. But there's no one to point it out, then it is never brought up and it can never be dealt with.

So I think we're compounding public misinformation. I don't think we are solving any of the problems that we had set out to solve when the hearings started and when this legislation was offered this last cycle. And I've heard repeatedly the discussions that this was going to assist physicians. But the economics of where physicians locate, the economics of why a physician goes to a rural area or works in a particular hospital, regardless of the anecdotal evidence that's been offered, is not dependent upon malpractice insurance premiums. Physicians are trained in this state in a higher proportion to other states. Physicians do their residencies here from all over the country and then they go back to their homes, just like most of you would do if you had the opportunity to have that kind of education. To manipulate those numbers and say that they're leaving because of the malpractice insurance premiums is wrong.

As to hospital closings, all of you know that this state has been going through a profound contraction over the last two decades in the delivery of health care services. Partly because of technological costs and capital costs and partly just because the nature of urban settlements has changed where people live and what they want. I mean, anyone who could go to a world-class medical center that's 45 minutes away in Ann Arbor is going to go to that particular facility or Burgess in Kent County or Bronson, when the alternative is to go to a small hospital or small service provider that may not have the technology and the physicians to deliver it. And most of you know that. But it does give good cover for voting for this legislation.

I have recommended to Senator Cherry that we put a requirement in the bill, since his amendment was removed in terms of the 20% reduction, we should put a requirement in the bill that when the malpractice premiums go out after this legislation passes that they should include with those premiums a list of all those legislators who voted for this legislation, because believe me, there will not be rate relief. You know it and I know it, and this canard will go on and they will come back with further ideas to erode due process and to stop those people who should be held accountable for malpractice from getting the justice that all of us believe should be exacted against them.

So the insurance companies will have a victory today and it will provide some short-term relief for their shareholders. But I'm sure that they have the power. I'm sure they have the suasion of a propaganda campaign that's successful in getting them this far to carry them into the next wave of legislation which will probably fall far as well.

Senator Stabenow's statement is as follows:

I voted "no" on the previous bill, in spite of the fact that I'm very concerned about the cost of medical malpractice insurance. I've supported reforms in the past. However, after watching what happened after 1986 when we were told at that time that costs would go down for providers with the reforms that were made then. We didn't see that happen. Instead we saw, unfortunately for providers, DRGs and Medicaid rates go down and hospital closings and a lot of other things that have added to pressures on hospitals and physicians. But we have not seen their premiums go down.

Unfortunately, the bill that was passed does dramatically limit protections to victims of malpractice. But it does not require that savings from those restrictions to be passed on to health care providers. The bill also was improved by the Pollack amendment, but it still discriminates against women who've had damage to their reproductive systems, which is of concern to me.

It seems to me it's been a competitor of theirs by eliminating requirements that they pass through. I think this is as good as we can get. I'm hearing about rates going up. This is on behalf of health care providers.

Senator Cherry's first statement:

When this bill was original, I heard a lot of good arguments. When this bill was said in the course of debate that it would be rolling their rates back by 20%, and if the purpose of the bill was to reduce malpractice premiums by 20%.

This body agreed with me that malpractice premiums were taken in the House substitute and was as an effort to reduce malpractice happens, has been removed from the bill.

Senator Cherry's second statement:

I heard a lot of good arguments. A major issue facing the state before us doesn't necessarily have their insurance company is going to do. I mean, we've been in the Senate, guaranteed that there are physicians of the state or professionals attract new doctors, which will reduce the medical costs that we all pay.

The House returned to us to do on behalf of our physician that.

Senator Carl's statement is:

Since coming to the legislature by saying that a family may be negligent or grossly negligent.

Senate Bill 270, it seems omnipotence as to life itself. Of each and every human being, what damages should be in an individual rights in upholding.

It is truly ironic that when there is a great repository of wisdom, juries are greatly diminished.

Senator Emmons asked a question printed in the Journal.

The motion prevailed.

Senator Emmons' statement:

I'm going to vote for this measure, let alone any Medicaid reform hospitable to the doctors so to bring doctors into my corner.

The President pro tempore:

It seems to me it's been another good week for insurance companies. Last week the Senate eliminated a major competitor of theirs by eliminating the Accident Fund. This week we're allowing them to limit their costs with no requirements that they pass that on to health care providers that we're concerned about maintaining in this state. I don't think this is as good as we could have done and I'm very concerned that we will be back here in a few more years hearing about rates going up. And we'll be back to the table again for the third time, unfortunately, having to address this on behalf of health care providers.

Senator Cherry's first statement is as follows:

When this bill was originally before the Senate, I had offered an amendment that would have required malpractice premiums to be rolled back by 20%. I had offered that amendment because the good Senator from the 28th District had said in the course of debate that a number of insurance companies had testified on this bill and they all felt like they would be rolling their rates back by at least 20%. It seemed to me at the time that if they all felt they could roll back 20%, and if the purpose of the bill was to reduce malpractice premiums, it was only fair that if we were going to reduce a person's tort access to remedy, that we assure that the bill accomplish its purpose, which was to reduce malpractice premiums by 20%.

This body agreed with me and adopted that amendment. In the House, that amendment requiring a 20% roll back in malpractice premiums was taken out of the bill. So consequently, Madam President, I will be voting "no" on concurring in the House substitute and would urge others to do likewise. It seems to me that we've all along represented this bill as an effort to reduce malpractice premiums. The very amendment and provision that would have required that that happens, has been removed from the bill. On that basis, Madam President, I will vote "no."

Senator Cherry's second statement is as follows:

I heard a lot of good arguments about how we need to help our physicians; how that is a major issue or that crisis is a major issue facing the state. There's much of what's being said that I agree with. The problem I have is that the bill before us doesn't necessarily help them at all. It does help their insurance company, but there's no clear guarantee that their insurance company is going to pass that savings on to those doctors who need that savings to do all that we want them to do. I mean, we've been through this set of reforms before and in fact we saw no financial relief. We, in the Senate, guaranteed that there would be financial relief when we passed the bill out of here. We guaranteed that the physicians of the state or prospective physicians would be able to enjoy a less costly malpractice premium which would attract new doctors, which would assure that our present physicians would remain in business, which would assure that the medical costs that we all have to face day in, day out could be reduced. That is what we sent to the House.

The House returned to us a bill that removed that guarantee. I would like to do all that is being said that we should do on behalf of our physicians. Unfortunately, the bill before us in the form amended by the House doesn't accomplish that.

Senator Carl's statement is as follows:

Since coming to the legislature, I have consistently opposed government attempting to assign the value of human life by saying that a family may recover only a limited specified amount if a patient loses his or her life due to the negligence or gross negligence of a medical practitioner.

Senate Bill 270, it seems to me, is a classic or traditional expression by the legislature to claim omniscience and omnipotence as to life itself. Apparently, all knowing and all powerful big brother is able to determine for all, the value of each and every human being who suffers a wrongful death. I recognize that there is no perfect way to determine what damages should be in a medical malpractice case, but my vote will continue to err, if it errs at all, on the side of individual rights in upholding the present jury system.

It is truly ironic that when it comes to electing men and women to the legislature, we consider the general public to be a great repository of wisdom, but when it comes to civil trials, our faith in our democratic system as it relates to juries is greatly diminished.

Senator Emmons asked and was granted unanimous consent to make a statement and moved that the statement be printed in the Journal.

The motion prevailed.

Senator Emmons' statement is as follows:

I'm going to vote for this bill. I lost my doctor and in my town there is no doctor that I can get right now to take me, let alone any Medicaid mother who is pregnant. And I think it's time that we did something to make our state more hospitable to the doctors so they come here. My hospital is out canvassing, sending letters, doing everything they can to bring doctors into my community. It's not being successful and this is a major reason.

The President pro tempore, Senator Ehlers, resumed the Chair.

Senators Koivisto, Faxon, Hart, Kelly, Conroy, Vaughn, Stabenow, Miller and Gougeon moved that they be named co-sponsors of the following bill:

**Senate Bill No. 343**

The motion prevailed.

**Senate Bill No. 270, entitled**

A bill to amend sections 1483, 2169, 2912a, 2912d, 2912e, 5838a, 5851, 5856, and 6013 of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judicature act of 1961," sections 1483, 2169, 2912d, 2912e, and 5838a as added and section 5851 as amended by Act No. 178 of the Public Acts of 1986 and section 6013 as amended by Act No. 50 of the Public Acts of 1987, being sections 600.1483, 600.2169, 600.2912a, 600.2912d, 600.2912e, 600.5838a, 600.5851, 600.5856, and 600.6013 of the Michigan Compiled Laws; and to add sections 955, 2912b, 2912f, and 2912g.

The House of Representatives has concurred in the Senate amendment made to the House substitute (H-2).

The Senate agreed to the title as amended.

The bill was referred to the Secretary for enrollment printing and presentation to the Governor.

**Recess**

Senator Arthurhultz moved that the Senate recess until 11:30 a.m.

The motion prevailed, the time being 10:58 a.m.

11:30 a.m.

The Senate reconvened at the expiration of the recess and was called to order by the President pro tempore, Senator Ehlers.

By unanimous consent the Senate proceeded to the order of

**Introduction and Referral of Bills**

Senator Dingell introduced

**Senate Bill No. 728, entitled**

A bill to amend Act No. 218 of the Public Acts of 1956, entitled as amended "The insurance code of 1956," as amended, being sections 500.100 to 500.8302 of the Michigan Compiled Laws, by adding section 3133.

The bill was read a first and second time by title and referred to the Committee on Commerce.

**House Bill No. 4716, entitled**

A bill to amend Act No. 328 of the Public Acts of 1931, entitled as amended "The Michigan penal code," as amended, being sections 750.1 to 750.568 of the Michigan Compiled Laws, by adding chapter XXA.

The House of Representatives has passed the bill and ordered that it be given immediate effect.

The bill was read a first and second time by title and referred to the Committee on Health Policy.

**House Bill No. 4717, entitled**

A bill to amend sections 13, 22, and 31 of Act No. 218 of the Public Acts of 1979, entitled as amended "Adult foster care facility licensing act," section 13 as amended by Act No. 176 of the Public Acts of 1992 and sections 22 and 31 as amended by Act No. 262 of the Public Acts of 1990, being sections 400.713, 400.722, and 400.731 of the Michigan Compiled Laws; and to add section 31a.

The House of Representatives has passed the bill and ordered that it be given immediate effect.

The bill was read a first and second time by title and referred to the Committee on Health Policy.

**House Bill No. 4791, entitled**

A bill to amend sections 402 and 407 of Act No. 350 of the Public Acts of 1980, entitled as amended "The nonprofit health care corporation reform act," section 402 as amended by Act No. 132 of the Public Acts of 1989, being sections 550.1402 and 550.1407 of the Michigan Compiled Laws; and to add section 416b.

The House of Representatives has passed the bill and ordered that it be given immediate effect.

The bill was read a first and second time by title and referred to the Committee on Commerce.

Senator Arthurhultz moved that the Senate recess until 11:30 a.m.  
The motion prevailed, the time being 10:58 a.m.

The Senate was called to order by the President pro tempore, Senator Ehlers.

By unanimous consent the Senate proceeded to the order of

By unanimous consent the Senate recessed until 11:30 a.m.  
**Senate Bill No. 537, entitled**

A bill to amend sections 2, 8, 9, 11, and 12 of Act No. 1 of the Public Acts of 1961, being sections 2, 8, 9, 11, and 12 of the Michigan Compiled Laws.

(This bill was returned from the Governor for amendment. The bill's immediate effect postponed. See Senate Bill No. 537.)

Senator Cherry raised the Point of Order that the bill should be brought back before the Senate.

The Assistant President pro tempore responded that the bill can be properly brought before the Senate. Senator Cherry moved to appeal the decision. The question being shall the decision be sustained? Senator Smith requested the yeas and nays. The yeas and nays were ordered, 1/5 yeas and 4/5 nays. The Senators voted as follows:

**Roll Call No. 561**

Arthurhultz	Duns
Bouchard	Ehlers
Carl	Emm
Cisky	Gast
DeGrow	Geak
DiNello	

Cherry	Faus
Conroy	Faxo
Dillingham	Hart
Dingell	Holn

Berryman

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# EXHIBIT D

## COMMITTEE ATTENDANCE REPORT

ocal Government, was received

nski, Wetters, Porreca, Byrum,

The following report, submitted by Rep. Gagliardi, Co-Chair of the Committee on House Oversight and Ethics, was received and read:

Meeting held on: Monday, March 29, 1993, at 2:00 p.m.,

Present: Reps. Gagliardi, Olshove, Jondahl, Murphy, Wallace, Fitzgerald, Bandstra, Martin, Brackenridge, Goschka, Whyman,

Absent: Rep. Profit,

Excused: Rep. Profit.

## Favorable Roll Call

## HB 4326 To Report Out:

Yeas: Reps. Gagliardi, Olshove, Jondahl, Fitzgerald, Bandstra, Brackenridge, Goschka, Whyman,

Nays: Rep. Martin.

Byrum,

The Committee on Judiciary, by Rep. Mathieu, Co-Chair, reported  
House Concurrent Resolution No. 73.

ed

er of the buildings at Whitefish

A concurrent resolution expressing the Michigan Legislature's opposition to the federal mandate to enact a state law requiring the automatic revocation or suspension of the driver's license of every individual convicted of any drug offense and urging the Governor to certify his opposition to such a state law.

(For text of resolution, see p. 409 of House Journal No. 18.)

With the recommendation that the concurrent resolution be adopted.

The Speaker announced that under Rule 82 the concurrent resolution would lie over one day.

ted

etary of the Army to exonerate

The Committee on Judiciary, by Rep. Mathieu, Co-Chair, reported  
House Bill No. 4403, entitled

A bill to amend section 2477 of Act No. 218 of the Public Acts of 1956, entitled as amended, "The insurance code of 1956," as amended by Act No. 173 of the Public Acts of 1986, being section 500.2477 of the Michigan Compiled Laws.

r one day.

With the recommendation that the substitute (H-1) be adopted and that the bill then pass.

The bill and substitute were referred to the order of Second Reading of Bills.

ted

e concurrent resolution then be

The Committee on Judiciary, by Rep. Mathieu, Co-Chair, reported  
House Bill No. 4404, entitled

A bill to amend Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," as amended, being sections 333.1101 to 333.25211 of the Michigan Compiled Laws, by adding sections 20204, 21581, 21582, 21583, and 21584.

inserting "six".

l inserting "six".

r one day.

With the recommendation that the substitute (H-1) be adopted and that the bill then pass.

The bill and substitute were referred to the order of Second Reading of Bills.

ted

ate political activity; to regulate  
s and lobbyist agents; to require  
prescribe penalties; and to repeal  
igan Compiled Laws, by adding

The Committee on Judiciary, by Rep. Mathieu, Co-Chair, reported  
Senate Bill No. 270, entitled

A bill to amend sections 1483, 2169, 2912a, 2912d, 2912e, 5838a, 5851, 5856, and 6013 of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judicature act of 1961," sections 1483, 2169, 2912d, 2912e, and 5838a as added and section 5851 as amended by Act No. 178 of the Public Acts of 1986 and section 6013 as amended by Act No. 50 of the Public Acts of 1987, being sections 600.1483, 600.2169, 600.2912a, 600.2912d, 600.2912e, 600.5838a, 600.5851, 600.5856, and 600.6013 of the Michigan Compiled Laws; and to add sections 955, 2912b, 2912f, and 2912g.

a pass.

With the recommendation that the substitute (H-1) be adopted and that the bill then pass.  
The bill and substitute were referred to the order of Second Reading of Bills.

[April 21, 1993]

No. 32]

ning Consortium was received and read

April 12, 1993

losed are summaries of the Master Plan  
993 in the Barry, Branch, and Calhoun  
Industry Council and the Chief Elected  
labor.

contained in these plans will be made  
est received by our office.

ate Industry Council and Chief Elected  
Inc., P.O. Box 1574, Battle Creek, MI  
request to the Mid Counties Employment

Sincerely,

Delores E. Diggs

Executive Director

e Journal and the accompanying report

Training Department was received and

Modifications

unded under Title IIA, Title IIC and Title  
it Employment and Training Department  
of the Master Plan effective July 1, 1993  
and administrative entity for the Detroit  
te Industry Council, provides job training

and education and the general public are  
plans and modifications were submitted  
Council to the Governor of Michigan on

he Journal and the accompanying report

### Introduction of Bills

Reps. Scott, Harrison, Pitoniak, Jondahl, Emerson, Gagliardi, Jacobetti, Bennane, Berman, Allen, Sikkema, Dolan, Bobier and Middleton introduced

House Bill No. 4628, entitled

A bill to create the office of the environmental ombudsman; and to prescribe the powers and duties of the office and certain state agencies and officials.

The bill was read a first time by its title and referred to the Committee on Appropriations.

Rep. Mathieu introduced

House Bill No. 4629, entitled

A bill to amend section 5129 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," as added by Act No. 471 of the Public Acts of 1988, being section 333.5129 of the Michigan Compiled Laws.

The bill was read a first time by its title and referred to the Committee on Public Health.

Rep. Profit introduced

House Bill No. 4630, entitled

A bill to amend sections 5131 and 5203 of Act No. 368 of the Public Acts of 1978, entitled as amended "Public health code," section 5131 as amended by Act No. 86 of the Public Acts of 1992 and section 5203 as amended by Act No. 490 of the Public Acts of 1988, being sections 333.5131 and 333.5203 of the Michigan Compiled Laws; and to add section 5212.

The bill was read a first time by its title and referred to the Committee on Public Health.

Reps. Voorhees, Porreca, Richard A. Young and Gilmer introduced

House Bill No. 4631, entitled

A bill to make appropriations to the department of treasury for the fiscal year ending September 30, 1993; and to provide for the expenditure of the appropriations.

The bill was read a first time by its title and referred to the Committee on Appropriations.

Reps. Olshove, Saunders, Harder, Curtis, Clack, Pitoniak, Rivers and Freeman introduced

House Bill No. 4632, entitled

A bill to amend section 107 of Act No. 280 of the Public Acts of 1939, entitled as amended "The social welfare act," being section 400.107 of the Michigan Compiled Laws.

The bill was read a first time by its title and referred to the Committee on Human Services and Children.

Reps. Dobronski, Willard, Dobb, Rhead, Voorhees, Olshove, Wetters, Byrum, Gire, Rivers, Agee, Harder, DeMars, Curtis, Freeman, Schroer, Baade and Anthony introduced

House Bill No. 4633, entitled

A bill to amend section 50b of Act No. 261 of the Public Acts of 1957, entitled as amended "Michigan legislative retirement system act," as amended by Act No. 58 of the Public Acts of 1987, being section 38.1050b of the Michigan Compiled Laws.

The bill was read a first time by its title and referred to the Committee on Public Retirement.

By unanimous consent the House returned to the order of

### Second Reading of Bills

Senate Bill No. 270, entitled

A bill to amend sections 1483, 2169, 2912a, 2912d, 2912e, 5838a, 5851, 5856, and 6013 of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judiciary act of 1961," sections 1483, 2169, 2912d, 2912e, and 5838a as added and section 5851 as amended by Act No. 178 of the Public Acts of 1986 and section 6013 as amended by Act No. 50 of the Public Acts of 1987, being sections 600.1483, 600.2169, 600.2912a, 600.2912d, 600.2912e, 600.5838a, 600.5851, 600.5856, and 600.6013 of the Michigan Compiled Laws; and to add sections 955, 2912b, 2912f, and 2912g.

Was read a second time, and the question being on the adoption of the proposed substitute (H-1) previously recommended by the Committee on Judiciary,

The substitute (H-1) was adopted, a majority of the members serving voting therefor.

Rep. Saunders moved to substitute (H-3) the bill.  
 The question being on the adoption of the substitute (H-3) offered by Rep. Saunders,  
 Rep. Bandstra demanded the yeas and nays.  
 The demand was supported.  
 The question being on the adoption of the substitute (H-3) offered by Rep. Saunders,  
 The substitute (H-3) was not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

## Roll Call No. 217

Yeas—38

Anthony	Dobronski	Kilpatrick	Schroer
Baade	Emerson	Leland	Scott
Barns	Gagliardi	Murphy	Stallworth
Bennane	Gire	Olshove	Varga
Berman	Gubow	O'Neill	Wallace
Brown	Harder	Owen	Wetters
Ciaramitaro	Harrison	Points	Willard
Clack	Hertel	Profit	Yokich
Curtis	Hollister	Saunders	Young, R.
DeMars	Jondahl		

Nays—63

Agee	Dolan	Jaye	Oxender
Alley	Fitzgerald	Jersevic	Palamara
Bandstra	Freeman	Johnson	Porreca
Banks	Galloway	Kaza	Randall
Bender	Gernaat	Keith	Rhead
Bobier	Gilmer	Kukuk	Rivers
Bodem	Gnodtke	Llewellyn	Rocca
Brackenridge	Goschka	London	Shepich
Bryant	Griffin	Lowe	Shugars
Bullard	Gustafson	Martin	Sikkema
Byrum	Hammerstrom	McBryde	Stille
Crissman	Hill	McManus	Voorhees
Cropsey	Hillemonds	McNutt	Vorva
Dalman	Horton	Middaugh	Walberg
DeLange	Jacobetti	Middleton	Whyman
Dobb	Jamian	Nye	

In The Chair: Hertel

Rep. Joe Young, Jr. entered the House and took his seat.

Reps. Griffin, Bandstra, Rhead and Shepich moved to substitute (H-2) the bill.  
 The question being on the adoption of the substitute (H-2) offered by Reps. Griffin, Bandstra, Rhead and Shepich,  
 Rep. Bandstra demanded the yeas and nays.  
 The demand was supported.  
 The question being on the adoption of the substitute (H-2) offered by Reps. Griffin, Bandstra, Rhead and Shepich,  
 The substitute (H-2) was adopted, a majority of the members serving voting therefor, by yeas and nays, as follows:

## Roll Call No. 218

Allen  
 Alley  
 Bandstra  
 Banks  
 Bender  
 Bobier  
 Bodem  
 Brackenridge  
 Bryant  
 Bullard  
 Crissman  
 Cropsey  
 Curtis  
 Dalman  
 DeLange  
 DeMars

Agee  
 Anthony  
 Baade  
 Barns  
 Bennane  
 Berman  
 Brown  
 Byrum  
 Ciaramitaro  
 Clack  
 Dobronski

In The Chair: Hertel

Rep. Gagliardi moved  
 The motion prevailed.

By unanimous consent

Co-Speakers Hillegon  
 House Resolution No.  
 A resolution offered a  
 Whereas, It is with si  
 Gardner, a man who ex  
 House of Representative  
 his friends. He will be  
 Whereas, A native of  
 the entire state are for  
 determination at a youn  
 and for Buick, he open  
 person of integrity who

## Roll Call No. 218

Yeas—62

referred, by yeas and nays as follows:

Schroer  
Scott  
Stallworth  
Varga  
Wallace  
Wetters  
Willard  
Yokich  
Young, R.

Allen  
Alley  
Bandstra  
Bankes  
Bender  
Bobier  
Bodem  
Brackenridge  
Bryant  
Bullard  
Crissman  
Cropsey  
Curtis  
Dalman  
DeLange  
DeMars

Dobb  
Dolan  
Fitzgerald  
Galloway  
Gernaat  
Gilmer  
Gnodtke  
Goschka  
Griffin  
Gustafson  
Hammerstrom  
Harder  
Hill  
Hillemonds  
Horton  
Jacobetti

Jamian  
Jaye  
Jersevic  
Johnson  
Kaza  
Keith  
Kukuk  
Llewellyn  
London  
Lowe  
Martin  
McBryde  
McManus  
McNutt  
Middaugh

Owen  
Oxender  
Palamara  
Porreca  
Randall  
Rhead  
Rocca  
Shepich  
Shugars  
Sikkema  
Stille  
Voorhees  
Walberg  
Wetters  
Whyman

Nays—42

Oxender  
Palamara  
Porreca  
Randall  
Rhead  
Rivers  
Rocca  
Shepich  
Shugars  
Sikkema  
Stille  
Voorhees  
Vorva  
Walberg  
Whyman

Agee  
Anthony  
Baade  
Barns  
Bennane  
Berman  
Brown  
Byrum  
Ciaramitaro  
Clack  
Dobronski

Emerson  
Freeman  
Gagliardi  
Gubow  
Harrison  
Hertel  
Hollister  
Hood  
Jondahl  
Kilpatrick  
Leland

Mathieu  
Middleton  
Murphy  
Nye  
Olshove  
O'Neill  
Pitoniak  
Points  
Rivers  
Saunders

Schroer  
Scott  
Stallworth  
Varga  
Vorva  
Wallace  
Willard  
Yokich  
Young, J., Jr.  
Young, R.

In The Chair: Hertel

Rep. Gagliardi moved that consideration of the bill be postponed temporarily.  
The motion prevailed.

By unanimous consent the House returned to the order of  
Motions and Resolutions

Co-Speakers Hillemonds and Hertel, on behalf of the entire membership, offered the following resolution:  
House Resolution No. 142.

A resolution offered as a memorial for former State Representative James H. Gardner.  
Whereas, It is with sincere respect for his contributions that we extend our praise as a memorial for Mr. James H. Gardner, a man who excelled in many endeavors throughout his accomplished lifetime, including as a member of the House of Representatives. We also offer our sympathy and condolences to his wife, Mona, the rest of his family, and his friends. He will be genuinely missed; and

Bandstra, Rhead and Shepich;

Bandstra, Rhead and Shepich;  
Yeas and nays, as follows:

Whereas, A native of Marion, Ohio, James Gardner moved to Flint in 1919, and the people of this city, and indeed the entire state are fortunate that he did. He was raised on a farm, and he learned the value of hard work and determination at a young age—a lesson that remained with him throughout his life. After working for a grocery store and for Buick, he opened Gardner Realty in 1922, where he continued to work until his retirement in 1990. He was a person of integrity who always provided diligent and effective service to his appreciative clients; and

## Roll Call No. 223

## Yeas—104

Agee	Dobronski	Jaye	Pitoniak
Allen	Dolan	Jersevic	Points
Alley	Emerson	Johnson	Porreca
Anthony	Fitzgerald	Jondahl	Profit
Baade	Freeman	Kaza	Randall
Bandstra	Gagliardi	Keith	Rhead
Bankes	Galloway	Kilpatrick	Rivers
Barns	Gernaat	Kukuk	Rocca
Bender	Gilmer	Leland	Saunders
Bennane	Gire	Llewellyn	Schroer
Berman	Gnodtke	London	Scott
Bobier	Goschka	Lowe	Shepich
Bodem	Griffin	Martin	Shugars
Brackenridge	Gubow	Mathieu	Sikkema
Brown	Gustafson	McBryde	Stille
Bryant	Hammerstrom	McManus	Varga
Bullard	Harder	McNutt	Voorhees
Byrum	Harrison	Middaugh	Vorva
Ciamaritaro	Hertel	Middleton	Walberg
Crissman	Hill	Murphy	Wallace
Cropsey	Hillegonds	Nye	Weeks
Curtis	Hollister	Olshove	Whyman
Dalman	Hood	O'Neill	Willard
DeLange	Horton	Owen	Yokich
DeMars	Jacobetti	Oxender	Young, J., Jr.
Dobb	Jamian	Palamara	Young, R.

## Nays—0

In The Chair: Murphy

The House agreed to the title of the bill.

Rep. Gagliardi moved that the bill be given immediate effect.

The motion prevailed, two-thirds of the members serving voting therefor.

## Second Reading of Bills

## Senate Bill No. 270, entitled

A bill to amend sections 1483, 2169, 2912a, 2912d, 2912e, 5838a, 5851, 5856, and 6013 of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judicature act of 1961," sections 1483, 2169, 2912d, 2912e, and 5838a as added and section 5851 as amended by Act No. 178 of the Public Acts of 1986 and section 6013 as amended by Act No. 50 of the Public Acts of 1987, being sections 600.1483, 600.2169, 600.2912a, 600.2912d, 600.2912e, 600.5838a, 600.5851, 600.5856, and 600.6013 of the Michigan Compiled Laws; and to add sections 955, 2912b, 2912f, and 2912g.

(The bill was read a second time, substitute (H-1) adopted, substitute (H-2) adopted and postponed temporarily on April 21, see p. 897 of House Journal No. 32.)

Rep. Nye moved to amend the bill as follows:

1. Amend page 13, line 17, after "WHO" by inserting "THE PLAINTIFF'S ATTORNEY REASONABLY BELIEVES".

2. Amend page 13, line 20, after "RECORDS" by inserting "SUPPLIED TO HIM OR HER BY THE PLAINTIFF'S ATTORNEY".

3. Amend page 15, line 4, after "RECORDS" by striking out "AS REQUIRED UNDER" and inserting "WITHIN THE TIME PERIOD SET FORTH IN".

4. Amend page 15, line 5, after "THE" by striking out the balance of the subsection and inserting "PLAINTIFF MAY FILE THE AFFIDAVIT REQUIRED UNDER SUBSECTION (1) WITHIN A NUMBER OF DAYS AFTER

FILING THE COMPLAINT THAT ALLOW ACCESS TO THE MEDIC

5. Amend page 15, line 10, after

6. Amend page 16, line 5, after BELIEVES".

7. Amend page 16, by striking o HAS REVIEWED THE COMPLAINT DEFENDANT'S ATTORNEY CO SHALL CONTAIN A STATEMEN

8. Amend page 17, line 14, after MAY FILE THE AFFIDAVIT RE FILING AN ANSWER THAT IS ALLOW ACCESS TO THE MEDI

9. Amend page 19, line 3, by st

The motion prevailed and the ar

Rep. Bandstra moved that the v

The motion prevailed.

The question being on the adop

Rep. Bandstra moved that cons

The motion prevailed.

Rep. Nye moved to amend the

1. Amend page 3, following li

"(D) THERE HAS BEEN

OR CHART IN VIOLATION O

PUBLIC ACTS OF 1931, BEIN

The motion prevailed and the

Rep. Bandstra moved that the

The motion prevailed.

The question being on the adc

Rep. Bandstra moved that cor

The motion prevailed.

Rep. Nye moved to amend th

1. Amend page 2, following

"SEC. 955. (1) AS USEI

(A) "CONTINGENCY FEE

DEPENDENT, IN WHOLE OR

OR ACTION ALLEGING MEI

(B) "PROPERLY CHARGE

PAID BY AN ATTORNEY ON

ALLEGING MEDICAL MALI

(C) "RECOVERY" MEAN

JUDGMENT.

(2) IN A CLAIM OR AC

ALLEGED MEDICAL MA

AGREEMENT WITH HIS OI

NOT EXCEED THE FOLLO

(A) IF THE CLAIM OR A

15% OF THE RECOVERY.

(B) IF THE CLAIM OR A

NOT MORE THAN 25% OF

(C) IF THE CLAIM OR

USED IN THIS SUBDIVISI

(3) THE FEES ALLOWI

RECOVERY AFTER D

DISBURSEMENTS. SUBJE

INTEREST INCLUDED B

JUDGMENT. IF A RECO

PRESENT VALUE OF THE

[April 22, 1993]

Pitoniak  
Points  
Porreca  
Proffit  
Randall  
Rhead  
Rivers  
Rocca  
Saunders  
Schroer  
Scott  
Shepich  
Shugars  
Sikkema  
Stille  
Varga  
Voorhees  
Vorva  
Walberg  
Wallace  
Weeks  
Whyman  
Willard  
Yokich  
Young, J., Jr.  
Young, R.

6013 of Act No. 236 of the  
1983, 2169, 2912d, 2912e, and  
and section 6013 as amended  
912a, 600.2912d, 600.2912e,  
and sections 955, 2912b, 2912f,

postponed temporarily on April 21,

ATTORNEY REASONABLY

TO HIM OR HER BY THE

ER" and inserting "WITHIN

and inserting "PLAINTIFF  
NUMBER OF DAYS AFTER

No. 33]

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FILING THE COMPLAINT THAT IS EQUAL TO THE NUMBER OF DAYS THE DEFENDANT FAILED TO ALLOW ACCESS TO THE MEDICAL RECORDS."

5. Amend page 15, line 10, after "complaint." by inserting "SUBJECT TO SUBSECTION (2)."

6. Amend page 16, line 5, after "WHO" by inserting "THE DEFENDANT'S ATTORNEY REASONABLY BELIEVES".

7. Amend page 16, by striking out all of line 7 and inserting "CERTIFY THAT THE HEALTH PROFESSIONAL HAS REVIEWED THE COMPLAINT AND ALL MEDICAL RECORDS SUPPLIED TO HIM OR HER BY THE DEFENDANT'S ATTORNEY CONCERNING THE ALLEGATIONS CONTAINED IN THE COMPLAINT AND SHALL CONTAIN A STATEMENT OF EACH OF THE FOLLOWING:"

8. Amend page 17, line 14, after "THE" by striking out the balance of the subsection and inserting "DEFENDANT MAY FILE THE AFFIDAVIT REQUIRED UNDER SUBSECTION (1) WITHIN A NUMBER OF DAYS AFTER FILING AN ANSWER THAT IS EQUAL TO 91 PLUS THE NUMBER OF DAYS THE PLAINTIFF FAILED TO ALLOW ACCESS TO THE MEDICAL RECORDS."

9. Amend page 19, line 3, by striking out all of lines 3 through 6.

The motion prevailed and the amendments were adopted, a majority of the members serving voting therefor.

Rep. Bandstra moved that the vote by which the House did adopt the amendments be reconsidered.

The motion prevailed.

The question being on the adoption of the amendments offered previously by Rep. Nye,

Rep. Bandstra moved that consideration of the amendments be postponed temporarily.

The motion prevailed.

Rep. Nye moved to amend the bill as follows:

1. Amend page 3, following line 11, by inserting:

"(D) THERE HAS BEEN ALTERATION, DESTRUCTION, OR FALSIFICATION OF A MEDICAL RECORD OR CHART IN VIOLATION OF SECTION 492A OF THE MICHIGAN PENAL CODE, ACT NO. 328 OF THE PUBLIC ACTS OF 1931, BEING SECTION 750.492A OF THE MICHIGAN COMPILED LAWS."

The motion prevailed and the amendment was adopted, a majority of the members serving voting therefor.

Rep. Bandstra moved that the vote by which the House did adopt the amendment be reconsidered.

The motion prevailed.

The question being on the adoption of the amendment offered previously by Rep. Nye,

Rep. Bandstra moved that consideration of the amendment be postponed temporarily.

The motion prevailed.

Rep. Nye moved to amend the bill as follows:

1. Amend page 2, following line 6, by inserting:

"SEC. 955. (1) AS USED IN THIS SECTION:

(A) "CONTINGENCY FEE AGREEMENT" MEANS AN AGREEMENT THAT AN ATTORNEY'S FEE IS DEPENDENT, IN WHOLE OR IN PART, UPON SUCCESSFUL PROSECUTION OR SETTLEMENT OF A CLAIM OR ACTION ALLEGING MEDICAL MALPRACTICE, OR UPON THE AMOUNT OF RECOVERY.

(B) "PROPERLY CHARGEABLE DISBURSEMENTS" MEANS REASONABLE EXPENSES INCURRED AND PAID BY AN ATTORNEY ON A CLIENT'S BEHALF IN PROSECUTING OR SETTLING A CLAIM OR ACTION ALLEGING MEDICAL MALPRACTICE.

(C) "RECOVERY" MEANS THE AMOUNT TO BE PAID AS A RESULT OF A SETTLEMENT OR MONEY JUDGMENT.

(2) IN A CLAIM OR ACTION FILED FOR PERSONAL INJURY OR WRONGFUL DEATH BASED UPON ALLEGED MEDICAL MALPRACTICE, IF AN ATTORNEY ENTERS INTO A CONTINGENCY FEE AGREEMENT WITH HIS OR HER CLIENT AND IF A RECOVERY RESULTS, THE ATTORNEY'S FEE SHALL NOT EXCEED THE FOLLOWING:

(A) IF THE CLAIM OR ACTION IS SETTLED BEFORE MEDIATION OR ARBITRATION, NOT MORE THAN 15% OF THE RECOVERY.

(B) IF THE CLAIM OR ACTION IS SETTLED AFTER MEDIATION OR ARBITRATION BUT BEFORE TRIAL, NOT MORE THAN 25% OF THE RECOVERY.

(C) IF THE CLAIM OR ACTION GOES TO TRIAL, NOT MORE THAN 33-1/3% OF THE RECOVERY. AS USED IN THIS SUBDIVISION, "TRIAL" MEANS WHEN THE CLAIM OR ACTION IS CALLED.

(3) THE FEES ALLOWED IN SUBSECTION (2) SHALL BE COMPUTED ON THE NET SUM OF THE RECOVERY AFTER DEDUCTING FROM THE RECOVERY THE PROPERLY CHARGEABLE DISBURSEMENTS. SUBJECT TO SECTION 6013(6), IN COMPUTING THE FEE, THE COSTS AS TAXED AND INTEREST INCLUDED BY THE COURT ARE PART OF THE RECOVERY CONSISTING OF A MONEY JUDGMENT. IF A RECOVERY IS PAYABLE IN INSTALLMENTS, THE FEE IS COMPUTED USING THE PRESENT VALUE OF THE FUTURE PAYMENTS.

(4) A CONTINGENCY FEE AGREEMENT MADE BY AN ATTORNEY WITH A CLIENT SHALL BE IN WRITING. AN ATTORNEY WHO FAILS TO COMPLY WITH THIS SUBSECTION IS BARRED FROM RECOVERING A FEE IN EXCESS OF THE LIMITATIONS SET FORTH IN SUBSECTION (2).

(5) AN ATTORNEY SHALL PROVIDE A COPY OF A CONTINGENCY FEE AGREEMENT TO A CLIENT AT THE TIME THE CONTINGENCY FEE AGREEMENT IS EXECUTED. BEFORE ENTERING INTO A CONTINGENCY FEE AGREEMENT WITH A CLIENT, AN ATTORNEY SHALL ADVISE THE CLIENT THAT THE ATTORNEY OR ANOTHER ATTORNEY MAY BE EMPLOYED UNDER ANOTHER FEE ARRANGEMENT UNDER WHICH THE ATTORNEY IS COMPENSATED FOR THE REASONABLE VALUE OF SERVICES PERFORMED, INCLUDING, BUT NOT LIMITED TO, AN HOURLY OR PER DIEM FEE ARRANGEMENT. AT THE TIME THE ATTORNEY ADVISES THE CLIENT OF OTHER FEE ARRANGEMENTS, THE ATTORNEY SHALL INFORM THE CLIENT OF HIS OR HER USUAL AND CUSTOMARY HOURLY RATE OF COMPENSATION.

(6) THE METHOD OF COMPENSATION USED BY AN INDIVIDUAL ATTORNEY IS THE ATTORNEY'S OPTION, AND THIS SECTION DOES NOT REQUIRE AN ATTORNEY TO ACCEPT COMPENSATION IN A MANNER OTHER THAN THAT CHOSEN BY THE ATTORNEY.

(7) AN ATTORNEY WHO ENTERS INTO A CONTINGENCY FEE AGREEMENT THAT VIOLATES SUBSECTION (2) IS BARRED FROM RECOVERING A FEE IN EXCESS OF THE ATTORNEY'S REASONABLE ACTUAL ATTORNEY FEES BASED ON HIS OR HER USUAL AND CUSTOMARY HOURLY RATE OF COMPENSATION, UP TO THE LIMITATIONS SET FORTH IN SUBSECTION (2), BUT THE OTHER PROVISIONS OF THE CONTINGENCY FEE AGREEMENT REMAIN ENFORCEABLE."

The question being on the adoption of the amendment offered by Rep. Nye,

Rep. Nye demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendment offered by Rep. Nye,

The amendment was not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

## Roll Call No. 224

**Years—14**

Allen  
Barns  
Gagliardi  
Gire

Gustafson  
Hill  
Jaye  
Llewellyn

London  
Mathieu  
McNutt

Nye  
Owen  
Schroer

**Nays—87**

Agee  
Alley  
Anthony  
Baade  
Bandstra  
Banks  
Bennane  
Berman  
Bobier  
Bodem  
Brackenridge  
Brown  
Bryant  
Bullard  
Byrum  
Ciaramitaro  
Crissman  
Cropsey  
Curtis  
Dalman  
DeLange  
DeMars

Dobb  
Dobronski  
Dolan  
Fitzgerald  
Freeman  
Galloway  
Germaat  
Gilmer  
Gnodtke  
Goschka  
Griffin  
Gubow  
Hammerstrom  
Harder  
Harrison  
Hertel  
Hillemonds  
Hollister  
Hood  
Horton  
Jacobetti  
Jamian

Jersevic  
Johnson  
Jondahl  
Kaza  
Keith  
Kilpatrick  
Kukuk  
Leland  
Lowe  
Martin  
McBryde  
McManus  
Middaugh  
Middleton  
Murphy  
Olshove  
O'Neill  
Oxender  
Palamara  
Pitoniak  
Points  
Porreca

Profit  
Randall  
Rhead  
Rivers  
Rocca  
Saunders  
Scott  
Shepich  
Shugars  
Sikkema  
Stille  
Varga  
Voorhees  
Vorva  
Walberg  
Wallace  
Weeks  
Whyman  
Willard  
Yokich  
Young, R.

### In The Chair: Murphy

Rep. Nye moved to amend the bill as follows:

1. Amend page 3, following line 11, by

(2) IF A DEFENDANT OFFERS THE FINANCIAL RESPONSIBILITY RI NO. 368 OF THE PUBLIC ACTS OF 19 THE LIMITATIONS ON DAMAGES REDUCED BY 50%" and renumbering t

The question being on the adoption of Rep. Nye demanded the yeas and nays The demand was supported.

The question being on the adoption of Rep. Wallace moved that consideration. The motion prevailed.

Rep. Cropsey moved to amend the bill

1. Amend page 28, line 10, after "PROVIDED IN SUBSECTION (12), IN"

2. Amend page 31, following line 26

"(12) IN A CIVIL ACTION BASED UPON A MEDIATION EVALUATION UNDER A MONEY JUDGMENT RECOVERED BY THE MEDIATION EVALUATION. IF THE DEFENDANT HAS REJECTED A MEDIATION AWARD 2 TIMES THE INTEREST SHALL BE RECOVERED BY THE PLAINTIFF, BASED UPON THE MEDIATION EVALUATION." and renumbering the

The question being on the adoption of  
Rep. Bandstra demanded the yeas and  
The demand was supported.

The amendments were not adopted.

follows:

## Roll Call No. 225

Anthony  
Barns  
Brackenridge  
Brown  
Bullard  
Byrum  
Ciaramitaro  
Cropsey  
Curtis

Del  
Em  
Ga  
Gir  
Gn  
Ha  
He  
Ho  
Jay

Agee  
Allen  
Alley  
Baade  
Bandstra  
Banks  
Bennane  
Berman  
Bobier  
Bodem  
Bryant  
Crissman  
Dalman

Fi  
Fi  
G  
G  
G  
G  
G  
G  
F  
F  
F

IF A CLIENT SHALL BE IN  
ACTION IS BARRED FROM  
ACTION (2).  
REEMENT TO A CLIENT AT  
FORE ENTERING INTO A  
ADVISE THE CLIENT THAT  
THEIR FEE ARRANGEMENT  
BLE VALUE OF SERVICES  
M FEE ARRANGEMENT AT  
EMENTS, THE ATTORNEY  
IARY HOURLY RATE OF

NEY IS THE ATTORNEY'S  
EPT COMPENSATION IN A

EMENT THAT VIOLATES  
ATTORNEY'S REASONABLE  
MARY HOURLY RATE OF  
IN (2), BUT THE OTHER  
ILE."

herefor, by yeas and nays, as

Nye  
Owen  
Schroer

Profit  
Randall  
Rhead  
Rivers  
Rocca  
Saunders  
Scott  
Shepich  
Shugars  
Sikkema  
Stille  
Varga  
Voorhees  
Vorva  
Walberg  
Wallace  
Weeks  
Whyman  
Willard  
Yokich  
Young, R.

Rep. Nye moved to amend the bill as follows:

1. Amend page 3, following line 11, by inserting:

"(2) IF A DEFENDANT OFFERS TO THE COURT SATISFACTORY EVIDENCE OF COMPLIANCE WITH THE FINANCIAL RESPONSIBILITY REQUIREMENTS SECTION 16280 OF THE PUBLIC HEALTH CODE, ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SECTION 333.16280 OF THE MICHIGAN COMPILED LAWS, THE LIMITATIONS ON DAMAGES FOR NONECONOMIC LOSS SET FORTH IN SUBSECTION (1) ARE REDUCED BY 50%" and renumbering the remaining subsections.

The question being on the adoption of the amendment offered by Rep. Nye,

Rep. Nye demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendment offered by Rep. Nye,

Rep. Wallace moved that consideration of the amendment be postponed temporarily.

The motion prevailed.

Rep. Cropsey moved to amend the bill as follows:

1. Amend page 28, line 10, after "(1)" by striking out "Interest" and inserting "EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (12), INTEREST".

2. Amend page 31, following line 26, by inserting:

"(12) IN A CIVIL ACTION BASED ON MEDICAL MALPRACTICE, IF THE PLAINTIFF HAS REJECTED A MEDIATION EVALUATION UNDER CHAPTER 49, THE COURT SHALL NOT AWARD INTEREST ON A MONEY JUDGMENT RECOVERED BY THE PLAINTIFF, UNLESS THE DEFENDANT HAS ALSO REJECTED THE MEDIATION EVALUATION. IN A CIVIL ACTION BASED ON MEDICAL MALPRACTICE, IF THE DEFENDANT HAS REJECTED A MEDIATION EVALUATION UNDER CHAPTER 49, THE COURT SHALL AWARD 2 TIMES THE INTEREST CALCULATED UNDER THIS SECTION ON A MONEY JUDGMENT RECOVERED BY THE PLAINTIFF, UNLESS THE PLAINTIFF HAS ALSO REJECTED THE MEDIATION EVALUATION." and renumbering the remaining subsections.

The question being on the adoption of the amendments offered by Rep. Cropsey,

Rep. Bandstra demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendments offered by Rep. Cropsey,

The amendments were not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

#### Roll Call No. 225

#### Yeas—36

Anthony  
Barns  
Brackenridge  
Brown  
Bullard  
Byrum  
Ciaramitaro  
Cropsey  
Curtis

DeMars  
Emerson  
Gagliardi  
Gire  
Gnodtke  
Harder  
Hertel  
Hood  
Jaye

Jersevic  
Kaza  
Leland  
Llewellyn  
Lowe  
Mathieu  
McNutt  
Nye  
O'Neill

Owen  
Palamara  
Pitoniak  
Profit  
Rhead  
Stille  
Varga  
Young, J., Jr.  
Young, R.

#### Nays—67

Agee  
Allen  
Alley  
Baade  
Bandstra  
Banks  
Bennane  
Berman  
Bobier  
Bodem  
Bryant  
Crissman  
Dalman

Fitzgerald  
Freeman  
Galloway  
Gernaat  
Gilmer  
Goschka  
Griffin  
Gubow  
Gustafson  
Hammerstrom  
Harrison  
Hill  
Hillemonds

Johnson  
Jondahl  
Keith  
Kilpatrick  
Kukuk  
London  
Martin  
McBryde  
McManus  
Middaugh  
Middleton  
Murphy  
Olshove

Rivers  
Rocca  
Saunders  
Schroer  
Scott  
Shepich  
Shugars  
Sikkema  
Voorhees  
Vorva  
Walberg  
Wallace  
Weeks

DeLange  
Dobb  
Dobronski  
Dolan

Hollister  
Horton  
Jacobetti  
Jamian

Oxender  
Points  
Porreca  
Randall

Whyman  
Willard  
Yokich

In The Chair: Murphy

Rep. Profit moved to amend the bill as follows:

1. Amend page 8, line 18, after "SERIOUS" by striking out "HEALTH CARE LITIGATION" and inserting "MEDICAL MALPRACTICE INSURANCE PREMIUM".
2. Amend page 8, line 19, after "OF" by striking out "DEFENSIVE MEDICINE AND".
3. Amend page 8, line 20, after "INSURANCE" by inserting a comma and "AND THAT THE INSURANCE INDUSTRY AND THE STATE INSURANCE COMMISSIONER HAVE NOT BEEN FORTHCOMING IN PROVIDING INFORMATION TO THE LEGISLATURE FROM WHICH TO ASSESS THE BASIS FOR THIS PROBLEM".

The question being on the adoption of the amendments offered by Rep. Profit,  
Rep. Bandstra demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendments offered by Rep. Profit,

Rep. Mathieu moved that consideration of the amendments be postponed temporarily.

The motion prevailed.

Rep. Profit moved to amend the bill as follows:

1. Amend page 8, line 17, after "SEC. 2912B." by inserting "(1) ALL MEDICAL MALPRACTICE INSURERS SHALL REDUCE THE RATES THEY CHARGE HEALTH CARE PROFESSIONALS BY NOT LESS THAN 20%."

and renumbering the remaining subsections.

The question being on the adoption of the amendment offered by Rep. Profit,

Rep. Martin moved that consideration of the amendment be postponed temporarily.

The question being on the motion by Rep. Martin,

Rep. Profit demanded the yeas and nays.

The demand was supported.

The question being on the motion by Rep. Martin,

The motion prevailed, a majority of the members voting therefor, by yeas and nays, as follows:

#### Roll Call No. 226

#### Yeas—55

Allen  
Bandstra  
Banks  
Bobier  
Bodem  
Brackenridge  
Bryant  
Bullard  
Crissman  
Dalman  
DeLange  
DeMars  
Dobb  
Dolan

Fitzgerald  
Galloway  
Gernaat  
Gilmer  
Gnodtke  
Goschka  
Gustafson  
Hammerstrom  
Harrison  
Hill  
Hillemonds  
Horton  
Jamian  
Jaye

Jersevic  
Johnson  
Kaza  
Kilpatrick  
Kukuk  
Llewellyn  
London  
Lowe  
Martin  
McBryde  
McManus  
McNutt  
Middaugh  
Middleton

Nye  
Oxender  
Randall  
Rhead  
Rocca  
Saunders  
Shugars  
Sikkema  
Stille  
Voorhees  
Vorva  
Walberg  
Whyman

#### Nays—44

Agee  
Alley  
Anthony  
Baade  
Barns  
Bennane

Dobronski  
Freeman  
Gagliardi  
Griffin  
Gubow  
Harder

Keith  
Leland  
Mathieu  
Murphy  
Olshove  
O'Neill

Profit  
Rivers  
Schroer  
Scott  
Shepich  
Wallace

Berman  
Brown  
Byrum  
Cropsey  
Curtis

Hertel  
Hollister  
Hood  
Jacobetti  
Jondahl

In The Chair: Murphy

Co-Speaker Pro Tempore Murphy called C

Rep. Murphy asked and obtained leave of

Rep. Cropsey moved to amend the bill as

1. Amend page 13, line 17, after "BY" by OR, IF THE PLAINTIFF IS REPRESENTED

The question being on the adoption of the  
Rep. Bandstra demanded the yeas and nay  
The demand was supported.  
The question being on the adoption of the  
The amendment was not adopted, a majori  
follows:

#### Roll Call No. 227

Agee  
Allen  
Anthony  
Baade  
Barns  
Bennane  
Berman  
Brown  
Bullard  
Byrum  
Ciaramitaro  
Cropsey  
Curtis  
DeLange

DeMars  
Dobronski  
Freeman  
Gagliardi  
Gernaat  
Gire  
Gnodtke  
Gubow  
Harder  
Harrison  
Hertel  
Hollister  
Jacobetti  
Jersevic

Alley  
Bandstra  
Banks  
Bobier  
Bodem  
Brackenridge  
Bryant  
Crissman  
Dalman  
Dobb  
Dolan

Fitzgerald  
Galloway  
Gilmer  
Goschka  
Griffin  
Gustafson  
Hammer  
Hill  
Hillemonds  
Horton  
Jamian

In The Chair: Gire

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Whyman  
Willard  
Yokich

Berman  
Brown  
Byrum  
Cropsey  
Curtis

Hertel  
Hollister  
Hood  
Jacobetti  
Jondahl

Owen  
Palamara  
Pitoniak  
Points  
Porreca

Weeks  
Willard  
Yokich  
Young, J., Jr.  
Young, R.

In The Chair: Murphy

ATION" and inserting

AT THE INSURANCE  
FORTHCOMING IN  
HE BASIS FOR THIS

PRACTICE INSURERS  
OT LESS THAN 20%

Co-Speaker Pro Tempore Murphy called Co-Associate Speaker Pro Tempore Gire to the Chair.

Rep. Murphy asked and obtained leave of absence from the balance of today's session.

Rep. Cropsey moved to amend the bill as follows:

1. Amend page 13, line 17, after "BY" by striking out the balance of the sentence and inserting "THE PLAINTIFF OR, IF THE PLAINTIFF IS REPRESENTED BY AN ATTORNEY, BY THE PLAINTIFF'S ATTORNEY."

The question being on the adoption of the amendment offered by Rep. Cropsey,

Rep. Bandstra demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendment offered by Rep. Cropsey,

The amendment was not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

Roll Call No. 227

Yeas—54

Agee  
Allen  
Anthony  
Baade  
Barns  
Bennane  
Berman  
Brown  
Bullard  
Byrum  
Ciaramitaro  
Cropsey  
Curtis  
DeLange

DeMars  
Dobronski  
Freeman  
Gagliardi  
Gernaat  
Gire  
Gnodtke  
Gubow  
Harder  
Harrison  
Hertel  
Hollister  
Jacobetti  
Jersevic

Jondahl  
Kilpatrick  
Leland  
Llewellyn  
Mathieu  
McBryde  
Nye  
Olshove  
O'Neill  
Owen  
Pitoniak  
Points  
Profit

Rivers  
Saunders  
Schroer  
Scott  
Stille  
Varga  
Vorva  
Walberg  
Wallace  
Willard  
Yokich  
Young, J., Jr.  
Young, R.

Nays—44

Alley  
Bandstra  
Banks  
Bobier  
Bodem  
Brackenridge  
Bryant  
Crissman  
Dalman  
Dobb  
Dolan

Fitzgerald  
Galloway  
Gilmer  
Goschka  
Griffin  
Gustafson  
Hammerstrom  
Hill  
Hillegonds  
Horton  
Jamian

Jaye  
Johnson  
Kaza  
Kukuk  
London  
Lowe  
Martin  
McManus  
McNutt  
Middaugh  
Middleton

Oxender  
Porreca  
Randall  
Rhead  
Rocca  
Shepich  
Shugars  
Sikkema  
Voorhees  
Weeks  
Whyman

In The Chair: Gire

Nye  
Oxender  
Randall  
Rhead  
Rocca  
Saunders  
Shugars  
Sikkema  
Stille  
Voorhees  
Vorva  
Walberg  
Whyman

Profit  
Rivers  
Schroer  
Scott  
Shepich  
Wallace

Rep. Hertel moved that the vote by which the House did not adopt the amendment be reconsidered.

The question being on the motion by Rep. Hertel,

Rep. Hertel moved that consideration of the motion be postponed temporarily.

The motion prevailed.

Rep. Bennane moved to amend the bill as follows:

1. Amend page 3, following line 11, by inserting:

"(2) IF A DEFENDANT DOES NOT OFFER TO THE COURT SATISFACTORY EVIDENCE OF COMPLIANCE WITH THE FINANCIAL RESPONSIBILITY REQUIREMENTS OF SECTION 16280 OF THE PUBLIC HEALTH CODE, ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SECTION 333.16280 OF THE MICHIGAN COMPILED LAWS, THE LIMITATIONS ON NONECONOMIC LOSS SET FORTH IN SUBSECTION (1) DO NOT APPLY." and renumbering the remaining subsections.

2. Amend page 35, following line 26 by inserting:

"(i) House Bill No. 4033.

(j) House Bill No. 4404."

The question being on the adoption of the amendments offered by Rep. Bennane,

Rep. Bandstra demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendments offered by Rep. Bennane,

The amendments were not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

#### Roll Call No. 228

#### Yeas—42

Agee	Dobronski	Jondahl	Saunders
Anthony	Freeman	Kilpatrick	Schroer
Baade	Gagliardi	Leland	Scott
Barns	Gire	Mathieu	Varga
Bennane	Gubow	Olshove	Wallace
Berman	Harder	O'Neill	Weeks
Brown	Harrison	Owen	Willard
Byrum	Hertel	Pitoniak	Yokich
Ciaramitaro	Hollister	Points	Young, J., Jr.
Curtis	Hood	Rivers	Young, R.
DeMars	Jacobetti		

#### Nays—58

Allen	Fitzgerald	Johnson	Palamara
Alley	Galloway	Kaza	Porreca
Bandstra	Gernaat	Keith	Profit
Banks	Gilmer	Kukuk	Randall
Bobier	Gnodtke	Llewellyn	Rhead
Bodem	Goschka	London	Rocca
Brackenridge	Griffin	Lowe	Shepich
Bryant	Gustafson	Martin	Shugars
Bullard	Hammerstrom	McBryde	Sikkema
Crissman	Hill	McManus	Stille
Cropsey	Hillegonds	McNutt	Voorhees
Dalman	Horton	Middaugh	Vorva
DeLange	Jamian	Middleton	Walberg
Dobb	Jaye	Oxender	Whyman
Dolan	Jersevic		

In The Chair: Gire

Rep. Gagliardi moved that consideration of the bill be postponed temporarily.  
The motion prevailed.

By unanimous consent the House n

Rep. Gagliardi moved that when th  
The motion prevailed.

Reps. Bennane, Agee, Barns, By Kilpatrick, Leland, Murphy, Olshov Yokich and Joe Young, Jr. offered the

House Concurrent Resolution No. 1  
A concurrent resolution of tribute

Whereas, The members of the Mi extend congratulations as he is name in interscholastic athletics. He has w has been director for the Office of H

Whereas, The Forsythe Award, t interscholastic community, is named Michigan High School Athletic Asso as this year's award winner, Roy All

Whereas, A graduate of Wayne S Northwestern High School Coach w Football Coaches Hall of Fame, a fo Force on Interscholastic Athletics fr directors of the Fisher YMCA and t anti-drug program; and

Whereas, Roy Allen has spent a l a player, as a coach, as a promoter directed toward those who are settin commendable; now, therefore, be it

Resolved by the House of Repres accorded Roy Allen as he receives t

Resolved, That a copy of this res Pending the reference of the conc

Rep. Olshove moved that the rule The motion prevailed, three-fifth

The question being on the adopti The concurrent resolution was ad

Reps. Bennane, Agee, Baade, Ba Jacobetti, Jamian, Kilpatrick, Lela Wallace, Weeks, Yokich and Joe Y

House Concurrent Resolution 1  
A concurrent resolution honoring

Whereas, The members of the honoring the Reverend Dr. Delano of civil rights and to the salvation at several churches in Michigan, p

Whereas, Delano Bowman's fig Northern High School urging ado earlier, the youthful civil rights ac In 1952, Delano became president

provide the Considine Center as a his efforts toward opening up the

Whereas, Not long after his ordi Monrovia College in Liberia, Wes currently a member of the AME I

No. 34]

Nays—10

Sikkema  
Varga  
Vorva  
Walberg  
Whyman  
Willard

Bullard  
DeLange  
Galloway

Gnodtke  
Griffin  
Middaugh

Middleton  
O'Neill

Profit  
Walberg

In The Chair: Hertel

The House agreed to the title of the bill.  
Rep. Rocca was named co-sponsor of the bill.

Rep. Profit, having reserved the right to enter his protest against the passage of the bill, made the following statement:

"Mr. Speaker and members of the House:

I voted 'no' on House Bill No. 4326 because I believe there are serious constitutional questions regarding 1st amendment and 4th amendment rights of free speech and due process."

regulate political activity; to regulate  
rists and lobbyist agents; to require  
to prescribe penalties; and to repeal  
Michigan Compiled Laws, by adding

refor, by yeas and nays, as follows:

Co-Speaker Hertel called Co-Speaker Pro Tempore Murphy to the Chair.

### Second Reading of Bills

#### House Bill No. 4511, entitled

A bill to amend section 710e of Act No. 300 of the Public Acts of 1949, entitled as amended "Michigan vehicle code," as amended by Act No. 25 of the Public Acts of 1991, being section 257.710e of the Michigan Compiled Laws.

The bill was read a second time.

Rep. Byrum moved that the bill be placed on the order of Third Reading of Bills.

The motion prevailed, a majority of the members voting therefor.

#### House Bill No. 4512, entitled

A bill to amend section 1230 of Act No. 451 of the Public Acts of 1976, entitled as amended "The school code of 1976," as added by Act No. 99 of the Public Acts of 1992, being section 380.1230 of the Michigan Compiled Laws.

Was read a second time, and the question being on the adoption of the proposed substitute (H-3) previously recommended by the Committee on Education,

The substitute (H-3) was adopted, a majority of the members serving voting therefor.

Rep. London moved that the bill be placed on the order of Third Reading of Bills.

The motion prevailed, a majority of the members voting therefor.

#### Senate Bill No. 270, entitled

A bill to amend sections 1483, 2169, 2912a, 2912d, 2912e, 5838a, 5851, 5856, and 6013 of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judicature act of 1961," sections 1483, 2169, 2912d, 2912e, and 5838a as added and section 5851 as amended by Act No. 178 of the Public Acts of 1986 and section 6013 as amended by Act No. 50 of the Public Acts of 1987, being sections 600.1483, 600.2169, 600.2912a, 600.2912d, 600.2912e, 600.5838a, 600.5851, 600.5856, and 600.6013 of the Michigan Compiled Laws; and to add sections 955, 2912b, 2912f, and 2912g.

Points  
Porreca  
Randall  
Rhead  
Rivers  
Rocca  
Saunders  
Schroer  
Shepich  
Shugars  
Sikkema  
Stille  
Varga  
Voorhees  
Vorva  
Wallace  
Weeks  
Wetters  
Whyman  
Willard  
Yokich  
Young, J., Jr.  
Young, R.

(The bill was read a second time, substitute (H-1) adopted, substitute (H-2) adopted and postponed temporarily on April 21, see p. 897 of House Journal No. 32; Nye amendments adopted, reconsidered and amendments postponed temporarily, Nye amendment offered and postponed temporarily, Profit amendments offered and postponed temporarily, Cropsey amendment not adopted, motion made to reconsider and postponed temporarily and bill postponed temporarily on April 22, see p. 922 of House Journal No. 33.)

Rep. Yokich moved to amend the bill as follows:

1. Amend page 26, line 25, after "HER" by striking out "EIGHTH" and inserting "THIRTEENTH".
2. Amend page 27, line 1, by striking out "TENTH" and reinserting "THIRTEENTH".
3. Amend page 27, line 5, after "HER" and inserting "FIFTEENTH".

The question being on the adoption of the amendments offered by Rep. Yokich,  
Rep. Bandstra demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendments offered by Rep. Yokich,  
After debate,

Rep. Hertel demanded the previous question.

The demand was supported.

The question being, "Shall the main question now be put?"

The previous question was ordered.

The question being on the adoption of the amendments offered by Rep. Yokich,

The amendments were not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

## Roll Call No. 232

## Yeas—48

Agee	Emerson	Leland	Saunders
Allen	Freeman	Mathieu	Schroer
Anthony	Gagliardi	Murphy	Scott
Baade	Gire	Nye	Varga
Barns	Gubow	Olshove	Vorva
Berman	Gustafson	O'Neill	Wallace
Brown	Harder	Owen	Weeks
Caramitaro	Harrison	Palamara	Whyman
Clack	Hertel	Pitoniak	Willard
Cropsey	Hollister	Points	Yokich
Curtis	Hood	Profit	Young, J., Jr.
DeMars	Jondahl	Rivers	Young, R.

## Nays—56

Alley	Dolan	Jaye	Middleton
Bandstra	Fitzgerald	Jersevic	Munsell
Banks	Galloway	Johnson	Oxender
Bender	Gernaat	Kaza	Porreca
Bobier	Gilmer	Keith	Randall
Bodem	Gnodtke	Kukuk	Rhead
Brackenridge	Goschka	Llewellyn	Rocca
Bryant	Griffin	London	Shepich
Bullard	Hammerstrom	Lowe	Shugars
Byrum	Hill	Martin	Sikkema
Crissman	Hillemonds	McBryde	Stille
Dalman	Horton	McManus	Voorhees
DeLange	Jacobetti	McNutt	Walberg
Dobb	Jamian	Middaugh	Wetters

In The Chair: Murphy

Rep. Bennane moved to amend the bill

1. Amend page 35, following line 26, by inserting "(i) House Bill No. 4403."

(j) House Bill No. 4404.

(k) House Bill No. 4405.

(l) House Bill No. 4406."

The question being on the adoption of  
Rep. Hertel moved that consideration of  
The motion prevailed.

Rep. Curtis moved to amend the bill as

1. Amend page 3, following line 11, by inserting "(D) THERE HAS BEEN A DEATH."

The question being on the adoption of  
Rep. Bandstra moved that consideration of  
The motion prevailed.

Rep. Gubow moved to amend the bill

1. Amend page 2, line 7, after "(1)" by inserting "IN SUBSECTION (2), IN".

2. Amend page 3, following line 11, by inserting "(2) IN AN ACTION FOR DAMAGES FOR GROSS NEGLIGENCE OR AN INTENTIONAL SUBSTANTIAL LACK OF CONCERN FOR THE SAFETY OF OTHERS."

The question being on the adoption of  
Rep. Bandstra demanded the yeas and  
The demand was supported.

The question being on the adoption of  
The amendments were not adopted,  
as follows:

## Roll Call No. 233

Agee	DeMars
Allen	Emery
Anthony	Freeman
Baade	Gire
Barns	Gut
Berman	Har
Brown	Hertel
Byrum	Hollister
Clack	Hood

Alley	Ga
Bandstra	Ga
Banks	Ge
Bender	Gi
Bobier	Gi
Bodem	Gi
Brackenridge	Gi
Bryant	H
Bullard	H
Crissman	H

[April 27, 1993]

and postponed temporarily on  
d and amendments postponed  
ents offered and postponed  
stponed temporarily and bill

"THIRTEENTH".  
H".

therefor, by yeas and nays, as

Saunders  
Schroer  
Scott  
Varga  
Vorva  
Wallace  
Weeks  
Whyman  
Willard  
Yokich  
Young, J., Jr.  
Young, R.

Middleton  
Munsell  
Oxender  
Porreca  
Randall  
Rhead  
Rocca  
Shepich  
Shugars  
Sikkema  
Stille  
Voorhees  
Walberg  
Wetters

No. 34]

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Rep. Bennane moved to amend the bill as follows:

1. Amend page 35, following line 26, by inserting:

"(i) House Bill No. 4403.

(j) House Bill No. 4404.

(k) House Bill No. 4405.

(l) House Bill No. 4406."

The question being on the adoption of the amendment offered by Rep. Bennane,  
Rep. Hertel moved that consideration of the amendment be postponed temporarily.  
The motion prevailed.

Rep. Curtis moved to amend the bill as follows:

1. Amend page 3, following line 11, by inserting:

"(D) THERE HAS BEEN A DEATH."

The question being on the adoption of the amendment offered by Rep. Curtis,  
Rep. Bandstra moved that consideration of the amendment be postponed temporarily.  
The motion prevailed.

Rep. Gubow moved to amend the bill as follows:

1. Amend page 2, line 7, after "(1)" by striking out "In" and inserting "EXCEPT AS OTHERWISE PROVIDED  
IN SUBSECTION (2), IN".

2. Amend page 3, following line 11, by inserting:

"(2) IN AN ACTION FOR DAMAGES ALLEGING MEDICAL MALPRACTICE, IF THERE HAS BEEN  
GROSS NEGLIGENCE OR AN INTENTIONAL TORT, SUBSECTION (1) DOES NOT APPLY. AS USED IN THIS  
SUBSECTION, "GROSS NEGLIGENCE" MEANS CONDUCT SO RECKLESS AS TO DEMONSTRATE A  
SUBSTANTIAL LACK OF CONCERN FOR WHETHER AN INJURY RESULTS." and renumbering the remaining  
subsections.

The question being on the adoption of the amendments offered by Rep. Gubow,

Rep. Bandstra demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendments offered by Rep. Gubow,

The amendments were not adopted, a majority of the members serving not voting therefor, by yeas and nays, as  
follows:

Roll Call No. 233

Yeas—36

Agee  
Allen  
Anthony  
Baade  
Barns  
Berman  
Brown  
Byrum  
Clack

DeMars  
Emerson  
Freeman  
Gire  
Gubow  
Harrison  
Hertel  
Hollister  
Hood

Jondahl  
Leland  
Mathieu  
Murphy  
Olshove  
O'Neill  
Pitoniak  
Points  
Profit

Rivers  
Saunders  
Schroer  
Scott  
Varga  
Wallace  
Willard  
Yokich  
Young, J., Jr.

Nays—67

Alley  
Bandstra  
Banks  
Bender  
Bobier  
Bodem  
Brackenridge  
Bryant  
Bullard  
Crissman

Gagliardi  
Galloway  
Gernaat  
Gilmer  
Gnodtke  
Goschka  
Griffin  
Gustafson  
Hammerstrom  
Harder

Johnson  
Kaza  
Keith  
Kukuk  
Llewellyn  
London  
Lowe  
Martin  
McBryde  
McManus

Palamara  
Porreca  
Randall  
Rhead  
Rocca  
Shepich  
Shugars  
Sikkema  
Stille  
Voorhees

Cropsey  
Curtis  
Dalman  
DeLange  
Dobb  
Dolan  
Fitzgerald

Hill  
Hillegonds  
Horton  
Jacobetti  
Jamian  
Jaye  
Jersevic

McNutt  
Middaugh  
Middleton  
Munsell  
Nye  
Owen  
Oxender

Vorva  
Walberg  
Weeks  
Wetters  
Whyman  
Young, R.

Brackenridge  
Bryant  
Bullard  
Crissman  
Cropsey  
Curtis  
Dalman  
DeLange  
Dobb  
Dolan  
Fitzgerald

In The Chair: Murphy

Rep. Gubow moved to amend the bill as follows:

1. Amend page 2, line 7, after "(1)" by striking out "In" and inserting "EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2), IN".

2. Amend page 3, following line 11, by inserting:

"(2) IN AN ACTION FOR DAMAGES ALLEGING MEDICAL MALPRACTICE, IF THERE HAS BEEN AN INTENTIONAL TORT, SUBSECTION (1) DOES NOT APPLY." and renumbering the remaining subsections.

The question being on the adoption of the amendments offered by Rep. Gubow,

Rep. Gubow moved that consideration of the amendments be postponed temporarily.

The motion prevailed.

Rep. Gubow moved to amend the bill as follows:

1. Amend page 2, line 7, after "(1)" by striking out "In" and inserting "EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2), IN".

2. Amend page 3, following line 11, by inserting:

"(2) IN AN ACTION FOR DAMAGES ALLEGING MEDICAL MALPRACTICE, IF THERE HAS BEEN GROSS NEGLIGENCE OR AN INTENTIONAL TORT, THE PLAINTIFF IS ENTITLED TO PUNITIVE DAMAGES. AS USED IN THIS SUBSECTION, "GROSS NEGLIGENCE" MEANS CONDUCT SO RECKLESS AS TO DEMONSTRATE A SUBSTANTIAL LACK OF CONCERN FOR WHETHER AN INJURY RESULTS." and renumbering the remaining subsections.

The question being on the adoption of the amendments offered by Rep. Gubow,

Rep. Bandstra demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendments offered by Rep. Gubow,

The amendments were not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

Roll Call No. 234

Yeas—32

Agee  
Anthony  
Baade  
Barns  
Berman  
Brown  
Byrum  
Ciaramitaro

Clack  
DeMars  
Gubow  
Harrison  
Hertel  
Hollister  
Hood  
Jondahl

Leland  
Mathieu  
Murphy  
Olshove  
O'Neill  
Pitoniak  
Points  
Rivers

Saunders  
Schroer  
Scott  
Wallace  
Weeks  
Willard  
Yokich  
Young, J., Jr.

Nays—68

Alley  
Bandstra  
Banks  
Bender  
Bobier  
Bodem

Freeman  
Gagliardi  
Galloway  
Gernaat  
Gilmer  
Gnodtke

Jersevic  
Johnson  
Kaza  
Keith  
Kukuk  
Llewellyn

Oxender  
Palamara  
Porreca  
Profit  
Randall  
Rhead

In The Chair: M

Rep. Gagliardi  
The motion p

Rep. Gubow  
1. Amend p  
subsections.

2. Amend p

3. Amend p

4. Amend p

5. Amend p

6. Amend p  
PATIENT'S R  
LAW."

7. Amend p

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Rep. Gubov

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Rep. Bands

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follows:

Roll Call No

Agee  
Allen  
Anthony  
Baade  
Barns  
Berman  
Brown  
Byrum  
Ciaramitaro  
Clack  
Cropsey  
Curtis  
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Brackenridge  
Bryant  
Bullard  
Crissman  
Cropsey  
Curtis  
Dalman  
DeLange  
Dobb  
Dolan  
Fitzgerald

Goschka  
Griffin  
Gustafson  
Hammerstrom  
Harder  
Hill  
Hillemonds  
Horton  
Jacobetti  
Jamian  
Jaye

London  
Lowe  
Martin  
McBryde  
McManus  
McNutt  
Middaugh  
Middleton  
Munsell  
Nye  
Owen

Rocca  
Shepich  
Shugars  
Sikkema  
Stille  
Voorhees  
Vorva  
Walberg  
Wetters  
Whyman  
Young, R.

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In The Chair: Murphy

HAS BEEN AN  
sections.

Rep. Gagliardi moved that Rep. Weeks be granted a leave of absence from the balance of today's session.  
The motion prevailed.

SE PROVIDED

Rep. Gubow moved to amend the bill as follows:

1. Amend page 8, line 17, after "SEC. 2912B." by striking out all of subsection (1) and renumbering the remaining subsections.
2. Amend page 9, line 12, after "SECTION" by striking out "(2)" and inserting "(1)".
3. Amend page 9, line 20, after "SUBSECTION" by striking out "(2)" and inserting "(1)".
4. Amend page 9, line 23, after "SUBSECTION" by striking out "(2)" and inserting "(1)".
5. Amend page 10, line 7, after "SUBSECTION" by striking out "(2)" and inserting "(1)".
6. Amend page 11, line 15, after "2912F." by inserting "THIS SUBSECTION DOES NOT RESTRICT A PATIENT'S RIGHT OF ACCESS TO HIS OR HER MEDICAL RECORDS UNDER ANY OTHER PROVISION OF LAW."
7. Amend page 12, line 14, after "SUBSECTION" by striking out "(8)" and inserting "(7)".

The question being on the adoption of the amendments offered by Rep. Gubow,  
Rep. Gubow moved that the amendments Nos. 1 through 5 and No. 7 be considered separately.

The motion prevailed.

The question being on the adoption of the amendments Nos. 1 through 5 and No. 7 offered by Rep. Gubow,  
Rep. Bandstra demurred the yeas and nays.

The demand was supported.

The question being on the adoption of the amendments Nos. 1 through 5 and No. 7 offered by Rep. Gubow,  
The amendments were not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

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# Roll Call No. 235

Yeas—51

Agee  
Allen  
Anthony  
Baade  
Barns  
Berman  
Brown  
Byrum  
Ciaramitaro  
Clack  
Cropsey  
Curtis  
DeMars

Dolan  
Freeman  
Gagliardi  
Gire  
Gubow  
Harder  
Harrison  
Hertel  
Hollister  
Hood  
Jaye  
Jersevic  
Jondahl

Leland  
Lowe  
Mathieu  
Murphy  
Nye  
Olshove  
O'Neill  
Owen  
Palamara  
Pitoniak  
Points  
Profit  
Rivers

Saunders  
Schroer  
Scott  
Varga  
Vorva  
Walberg  
Wallace  
Wetters  
Whyman  
Willard  
Yokich  
Young, R.

## Nays—47

Alley	Galloway	Jamian	Munsell
Bandstra	Gernaat	Johnson	Oxender
Banks	Gilmer	Kaza	Porreca
Bobier	Gnodtke	Keith	Randall
Bodem	Goschka	Kukuk	Rhead
Brackenridge	Griffin	Llewellyn	Rocca
Bryant	Gustafson	London	Shepich
Bullard	Hammerstrom	Martin	Shugars
Crissman	Hill	McBryde	Sikkema
DeLange	Hillegonds	McManus	Stille
Dobb	Horton	Middaugh	Voorhees
Fitzgerald	Jacobetti	Middleton	

In The Chair: Murphy

Rep. Gubow moved that the vote by which the House did not adopt the amendments be reconsidered.  
The question being on the motion by Rep. Gubow,  
Rep. Gubow moved that consideration of the motion be postponed temporarily.  
The motion prevailed.

Co-Speaker Pro Tempore Murphy called Co-Associate Speaker Pro Tempore Gire to the Chair.

The question being on the adoption of the amendment No. 6 offered previously by Rep. Gubow,  
The amendment was adopted, a majority of the members serving voting therefor.

Rep. Gubow moved to amend the bill as follows:

1. Amend page 8, line 10, after "RESULT" by inserting a comma and "UNLESS THE LIKELIHOOD OF SURVIVAL OR OF ACHIEVING A BETTER RESULT WAS GREATER THAN 50%".

The question being on the adoption of the amendment offered by Rep. Gubow,

Rep. Bandstra moved that consideration of the amendment be postponed temporarily.

The motion prevailed.

Rep. Gubow moved to amend the bill as follows:

1. Amend page 11, line 7, after "WITHIN" by striking out "91" and inserting "35".

The question being on the adoption of the amendment offered by Rep. Gubow,

Rep. Bandstra moved that consideration of the amendment be postponed temporarily.

The motion prevailed.

Rep. Jaye moved to amend the bill as follows:

1. Amend page 2, following line 6, by inserting:

"SEC. 955. (1) AS USED IN THIS SECTION:

(A) "CONTINGENCY FEE AGREEMENT" MEANS AN AGREEMENT THAT AN ATTORNEY'S FEE IS DEPENDENT, IN WHOLE OR IN PART, UPON SUCCESSFUL PROSECUTION OR SETTLEMENT OF A CLAIM OR ACTION ALLEGING MEDICAL MALPRACTICE, OR UPON THE AMOUNT OF RECOVERY.

(B) "PROPERLY CHARGEABLE DISBURSEMENTS" MEANS REASONABLE EXPENSES INCURRED AND PAID BY AN ATTORNEY ON A CLIENT'S BEHALF IN PROSECUTING OR SETTLING A CLAIM OR ACTION ALLEGING MEDICAL MALPRACTICE.

(C) "RECOVERY" MEANS THE AMOUNT TO BE PAID AS A RESULT OF A SETTLEMENT OR MONEY JUDGMENT.

(2) IN A CLAIM OR ACTION FILED FOR PERSONAL INJURY OR WRONGFUL DEATH BASED UPON ALLEGED MEDICAL MALPRACTICE, IF AN ATTORNEY ENTERS INTO A CONTINGENCY FEE AGREEMENT WITH HIS OR HER CLIENT AND IF A RECOVERY RESULTS, THE ATTORNEY'S FEE SHALL NOT EXCEED 33-1/3% OF THE FIRST \$250,000.00 OF THE RECOVERY; NOT MORE THAN 20% OF THE

PORTION OF THE RECOVERY MORE THAN 10% OF THE RECOVERY.

(3) THE FEE ALLOWED FOR RECOVERY AFTER DISBURSEMENTS, INCLUDING INTEREST INCLUDED IN THE JUDGMENT, IF A RECOVERY IS PRESENT VALUE OF THE RECOVERY.

(4) A CONTINGENCY FEE WRITING. AN ATTORNEY RECOVERING A FEE IN THE TIME THE CONTINGENCY FEE IS UNDER WHICH THE PERFORMED, INCLUDING THE TIME THE ATTORNEY SHALL INFORM THE COMPENSATION.

(5) AN ATTORNEY'S OPTION, AND THIS MANNER OTHER THAN SUBSECTION (2) IS BASED ON ACTUAL ATTORNEY COMPENSATION, UNDER PROVISIONS OF THE

The question being on Rep. Jaye demanded The demand was supported The question being on After debate,

Rep. O'Neill demanded The demand was supported The question being, The previous question The question being on The amendment was follows:

The question being on Rep. Jaye demanded The demand was supported The question being on After debate, Rep. O'Neill demanded The demand was supported The question being, The previous question The question being on The amendment was follows:

Roll Call No. 236

Alley  
Galloway  
Gire  
Goschka

Agce  
Allen  
Anthony  
Bande  
Bandstra

Munsell  
Oxender  
Porreca  
Randall  
Rhead  
Rocca  
Shepich  
Shugars  
Sikkema  
Stille  
Voorhees

ndments be reconsidered.

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Gire to the Chair.

ly by Rep. Gubow,  
for.

"UNLESS THE LIKELIHOOD OF  
50%".

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g "35".

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THAT AN ATTORNEY'S FEE IS  
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INT OF RECOVERY.  
BLE EXPENSES INCURRED AND  
SETTLING A CLAIM OR ACTION

OF A SETTLEMENT OR MONEY

LONGFUL DEATH BASED UPON  
INTO A CONTINGENCY FEE  
S, THE ATTORNEY'S FEE SHALL  
NOT MORE THAN 20% OF THE

PORTION OF THE RECOVERY THAT IS MORE THAN \$250,000.00 BUT LESS THAN \$500,000.00; AND NOT MORE THAN 10% OF THE PORTION OF THE RECOVERY THAT IS MORE THAN \$500,000.00.  
(3) THE FEE ALLOWED IN SUBSECTION (2) SHALL BE COMPUTED ON THE NET SUM OF THE RECOVERY AFTER DEDUCTING FROM THE RECOVERY THE PROPERLY CHARGEABLE DISBURSEMENTS. SUBJECT TO SECTION 6013(6), IN COMPUTING THE FEE, THE COSTS AS TAXED AND INTEREST INCLUDED BY THE COURT ARE PART OF THE RECOVERY CONSISTING OF A MONEY JUDGMENT. IF A RECOVERY IS PAYABLE IN INSTALLMENTS, THE FEE IS COMPUTED USING THE PRESENT VALUE OF THE FUTURE PAYMENTS.

(4) A CONTINGENCY FEE AGREEMENT MADE BY AN ATTORNEY WITH A CLIENT SHALL BE IN WRITING. AN ATTORNEY WHO FAILS TO COMPLY WITH THIS SUBSECTION IS BARRED FROM RECOVERING A FEE IN EXCESS OF THE LIMITATIONS SET FORTH IN SUBSECTION (2).

(5) AN ATTORNEY SHALL PROVIDE A COPY OF A CONTINGENCY FEE AGREEMENT TO A CLIENT AT THE TIME THE CONTINGENCY FEE AGREEMENT IS EXECUTED. BEFORE ENTERING INTO A CONTINGENCY FEE AGREEMENT WITH A CLIENT, AN ATTORNEY SHALL ADVISE THE CLIENT THAT THE ATTORNEY OR ANOTHER ATTORNEY MAY BE EMPLOYED UNDER ANOTHER FEE ARRANGEMENT UNDER WHICH THE ATTORNEY IS COMPENSATED FOR THE REASONABLE VALUE OF SERVICES PERFORMED, INCLUDING, BUT NOT LIMITED TO, AN HOURLY OR PER DIEM FEE ARRANGEMENT. AT THE TIME THE ATTORNEY ADVISES THE CLIENT OF OTHER FEE ARRANGEMENTS, THE ATTORNEY SHALL INFORM THE CLIENT OF HIS OR HER USUAL AND CUSTOMARY HOURLY RATE OF COMPENSATION.

(6) THE METHOD OF COMPENSATION USED BY AN INDIVIDUAL ATTORNEY IS THE ATTORNEY'S OPTION, AND THIS SECTION DOES NOT REQUIRE AN ATTORNEY TO ACCEPT COMPENSATION IN A MANNER OTHER THAN THAT CHOSEN BY THE ATTORNEY.

(7) AN ATTORNEY WHO ENTERS INTO A CONTINGENCY FEE AGREEMENT THAT VIOLATES SUBSECTION (2) IS BARRED FROM RECOVERING A FEE IN EXCESS OF THE ATTORNEY'S REASONABLE ACTUAL ATTORNEY FEES BASED ON HIS OR HER USUAL AND CUSTOMARY HOURLY RATE OF COMPENSATION, UP TO THE LIMITATIONS SET FORTH IN SUBSECTION (2), BUT THE OTHER PROVISIONS OF THE CONTINGENCY FEE AGREEMENT REMAIN ENFORCEABLE."

The question being on the adoption of the amendment offered by Rep. Jaye,

Rep. Jaye demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendment offered by Rep. Jaye,

After debate,

Rep. O'Neill demanded the previous question.

The demand was supported.

The question being, "Shall the main question now be put?"

The previous question was ordered.

The question being on the adoption of the amendment offered by Rep. Jaye,

The amendment was not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

#### Roll Call No. 236

#### Yeas—15

Alley  
Galloway  
Gire  
Goschka

Gustafson  
Hill  
Horton  
Jaye

Johnson  
Kukuk  
Llewellyn  
Randall

Scott  
Voorhees  
Young, R.

#### Nays—86

Agee  
Allen  
Anthony  
Baade  
Bandstra

DeMars  
Dobb  
Dolan  
Emerson  
Fitzgerald

Jondahl  
Kaza  
Keith  
Leland  
London

Pitoniak  
Points  
Porreca  
Profit  
Rhead

Rivers  
Rocca  
Saunders  
Schroer  
Shepich  
Shugars  
Sikkema  
Stille  
Varga  
Vorva  
Walberg  
Wallace  
Wetters  
Whyman  
Willard  
Yokich

Bryant	Gus
Bullard	Han
Crissman	Hill
Dalman	Hill
DeLange	Hor
Dobb	Jacc
Dolan	Jam

### In The Chair: Gire

The amendment was not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

**Years—44**

Hood  
Jersevic  
Jondahl  
Leland  
Mathieu  
Murphy  
Olshove  
O'Neill  
Palamara  
Pitoniak  
Points

Profit  
Rivers  
Saunders  
Schroer  
Scott  
Vorva  
Wallace  
Wetters  
Willard  
Yokich  
Young, R.

Jaye  
Johnson  
Kaza  
Keith  
Kukuk  
Llewellyn  
London

Munsell  
Nye  
Oxender  
Porreca  
Randall  
Rhead  
Rocca

(3) THE NOTICE OF INTENT TO FILE TO THE LAST KNOWN PROFESSIONAL HEALTH PROFESSIONAL OR HEALTH MAILING CONSTITUTES PRIMA FACIE KNOWLEDGE OF THE LAST KNOWN PROFESSIONAL BUSINESS ADDRESS. NOTICE MAY BE MAILED TO THE LAST KNOWN ADDRESS IF THE CLAIM WAS RENDERED

Rivers  
 Rocca  
 Saunders  
 Schroer  
 Shepich  
 Shugars  
 Sikkema  
 Stille  
 Varga  
 Vorva  
 Walberg  
 Wallace  
 Wetters  
 Whyman  
 Willard  
 Yokich

Bryant  
 Bullard  
 Crissman  
 Dalman  
 DeLange  
 Dobb  
 Dolan

Gustafson  
 Hammerstrom  
 Hill  
 Hillegonds  
 Horton  
 Jacobetti  
 Jamian

Lowe  
 Martin  
 McBryde  
 McManus  
 McNutt  
 Middaugh  
 Middleton

Shepich  
 Shugars  
 Sikkema  
 Stille  
 Voorhees  
 Walberg  
 Whyman

In The Chair: Gire

Reps. Martin and Profit moved to amend the bill as follows:

1. Amend page 22, following line 10, by inserting:

"SEC. 2912I. (A) NO INSURER WRITING, OR OFFERING TO WRITE MEDICAL MALPRACTICE INSURANCE IN MICHIGAN SHALL MAKE RATES THAT ANTICIPATE AN UNDERWRITING PROFIT IN EXCESS OF 5% OF NET EARNED PREMIUM. IF AN INSURER WRITING, OR OFFERING TO WRITE MEDICAL MALPRACTICE INSURANCE IN MICHIGAN MAKES AN UNDERWRITING PROFIT IN EXCESS OF 5% OF NET EARNED PREMIUM IN ANY YEAR, IT SHALL PAY A DIVIDEND TO ITS MEDICAL MALPRACTICE POLICYHOLDERS OF RECORD ON DECEMBER 31 OF THAT YEAR NO LATER THAN MARCH 31 OF THE FOLLOWING YEAR.

(B) THE DIVIDEND REQUIRED IN SUBDIVISION (A) SHALL:

(1) BE EQUAL TO OR GREATER THAN THE AMOUNT OF UNDERWRITING PROFIT IN EXCESS OF 5% OF NET EARNED PREMIUM.

(2) BE DISTRIBUTED TO POLICYHOLDERS IN A MANNER THAT IS REASONABLY RELATED TO THE TOTAL AMOUNT OF THE PREMIUM CHARGE FOR EACH POLICYHOLDER FOR THE POLICY IN EFFECT ON DECEMBER 31 OF THE YEAR FOR WHICH THE INSURER IS REQUIRED TO PAY A DIVIDEND.

(3) BE EITHER IN THE FORM OF A PAYMENT OR AS A CREDIT TO BE APPLIED TO THE POLICYHOLDER'S ACCOUNT."

The motion prevailed and the amendment was adopted, a majority of the members serving voting therefor.

Rep. Martin moved that the vote by which the House did adopt the amendment be reconsidered.

The motion prevailed.

The question being on the adoption of the amendment offered by Reps. Martin and Profit,

Rep. Martin withdrew the amendment.

Rep. Yokich moved to amend the bill as follows:

1. Amend page 7, line 16, by striking all of section 2912a.

The question being on the adoption of the amendment offered by Rep. Yokich,

Rep. Yokich moved that consideration of the amendment be postponed temporarily.

The motion prevailed.

Rep. Mathieu moved to amend the bill as follows:

1. Amend page 8, line 17, by striking out all of section 2912B and inserting:

"SEC. 2912B. (1) THE SOLE PURPOSE OF THIS SECTION IS TO PROMOTE SETTLEMENT AND AMICABLE RESOLUTION OF MEDICAL MALPRACTICE CLAIMS WITHOUT THE NEED FOR COMMENCING FORMAL LITIGATION; TO REDUCE THE COST OF MEDICAL MALPRACTICE LITIGATION IN GENERAL; AND TO PROVIDE COMPENSATION FOR MERITORIOUS MEDICAL MALPRACTICE CLAIMS THAT WOULD OTHERWISE BE PRECLUDED FROM RECOVERY BECAUSE OF THE EXCESSIVE COSTS OF LITIGATION.

(2) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A PERSON SHALL NOT COMMENCE AN ACTION ALLEGING MEDICAL MALPRACTICE AGAINST A HEALTH PROFESSIONAL OR HEALTH FACILITY UNLESS THE PERSON HAS GIVEN THE HEALTH PROFESSIONAL OR HEALTH FACILITY WRITTEN NOTICE UNDER THIS SECTION NOT LESS THAN 182 DAYS BEFORE THE ACTION IS COMMENCED.

(3) THE NOTICE OF INTENT TO FILE A CLAIM REQUIRED UNDER SUBSECTION (2) SHALL BE MAILED TO THE LAST KNOWN PROFESSIONAL BUSINESS ADDRESS OR RESIDENTIAL ADDRESS OF THE HEALTH PROFESSIONAL OR HEALTH FACILITY WHO IS THE SUBJECT OF THE CLAIM. PROOF OF THE MAILING CONSTITUTES PRIMA FACIE EVIDENCE OF COMPLIANCE WITH THIS SECTION. IF NO LAST KNOWN PROFESSIONAL BUSINESS OR RESIDENTIAL ADDRESS CAN REASONABLY BE ASCERTAINED, NOTICE MAY BE MAILED TO THE HEALTH FACILITY WHERE THE CARE THAT IS THE BASIS FOR THE CLAIM WAS RENDERED.

Profit  
 Rivers  
 Saunders  
 Schroer  
 Scott  
 Vorva  
 Wallace  
 Wetters  
 Willard  
 Yokich  
 Young, R.

Munsell  
 Nye  
 Oxender  
 Porreca  
 Randall  
 Rhead  
 Rocca

(4) IF THE IDENTITY OF THE HEALTH PROFESSIONAL OR HEALTH FACILITY TO WHOM NOTICE MUST BE GIVEN UNDER SUBSECTION (2) CANNOT BE REASONABLY ASCERTAINED, THE NOTICE MAY BE MAILED TO THE HEALTH FACILITY WHERE THE CARE THAT IS THE BASIS FOR THE CLAIM WAS RENDERED, SO LONG AS A REASONABLE ATTEMPT IS MADE IN THE NOTICE TO DESCRIBE THE PERSON OR PERSONS FOR WHOM THE NOTICE IS INTENDED.

(5) A NOTICE GIVEN IN COMPLIANCE WITH THIS SECTION CONSTITUTES NOTICE TO A HEALTH CARE PROFESSIONAL, WHETHER LICENSED OR NOT, A LICENSED HEALTH FACILITY OR AGENCY, OR AN EMPLOYEE OR AGENT OF A LICENSED HEALTH FACILITY OR AGENCY WHO MAY BE JOINED AS A PARTY DEFENDANT AFTER THE ACTION ALLEGING MEDICAL MALPRACTICE IS COMMENCED.

(6) THE NOTICE GIVEN TO A HEALTH PROFESSIONAL OR HEALTH FACILITY UNDER THIS SECTION SHALL CONTAIN A STATEMENT OF AT LEAST ALL OF THE FOLLOWING:

(A) THE FACTUAL BASIS FOR THE CLAIM.

(B) THE APPLICABLE STANDARD OF PRACTICE OR CARE ALLEGED BY THE CLAIMANT.

(C) THE MANNER IN WHICH IT IS CLAIMED THAT THE APPLICABLE STANDARD OF PRACTICE OR CARE WAS BREACHED BY THE HEALTH PROFESSIONAL OR HEALTH FACILITY.

(D) THE ALLEGED ACTION THAT SHOULD HAVE BEEN TAKEN TO ACHIEVE COMPLIANCE WITH THE ALLEGED STANDARD OF PRACTICE OR CARE.

(E) THE MANNER IN WHICH IT IS ALLEGED THE BREACH OF THE STANDARD OF PRACTICE OR CARE WAS THE PROXIMATE CAUSE OF THE INJURY CLAIMED IN THE NOTICE.

(F) THE NAMES OF ALL HEALTH PROFESSIONALS AND HEALTH FACILITIES THE CLAIMANT IS NOTIFYING UNDER THIS SECTION IN RELATION TO THE CLAIM.

(7) WITHIN 91 DAYS AFTER GIVING NOTICE UNDER THIS SECTION, THE CLAIMANT SHALL ALLOW THE HEALTH PROFESSIONAL OR HEALTH FACILITY RECEIVING THE NOTICE ACCESS TO THE MEDICAL RECORDS RELATED TO THE CLAIM. SUBJECT TO SECTION 6013(9), WITHIN 91 DAYS AFTER RECEIPT OF NOTICE UNDER THIS SECTION, THE HEALTH PROFESSIONAL OR HEALTH FACILITY SHALL ALLOW THE CLAIMANT ACCESS TO THE HEALTH PROFESSIONAL'S OR HEALTH FACILITY'S MEDICAL RECORDS RELATED TO THE CLAIM.

(8) AFTER THE INITIAL NOTICE IS GIVEN TO A HEALTH PROFESSIONAL OR HEALTH FACILITY UNDER THIS SECTION, THE TACKING OR ADDITION OF SUCCESSIVE 182-DAY PERIODS IS NOT ALLOWED, IRRESPECTIVE OF HOW MANY ADDITIONAL NOTICES ARE SUBSEQUENTLY FILED FOR THAT CLAIM AND IRRESPECTIVE OF THE NUMBER OF HEALTH PROFESSIONALS OR HEALTH FACILITIES NOTIFIED.

(9) AFTER NOTICE HAS BEEN GIVEN IN COMPLIANCE WITH THIS SECTION AND AN ACTION ALLEGING MEDICAL MALPRACTICE IS COMMENCED, THIS SECTION DOES NOT APPLY TO THE ACTION AND DOES NOT PREVENT THE ADDITION OF PARTIES DEFENDANT TO THE ACTION. THE NOTICE REQUIREMENT OF THIS SECTION DOES NOT REQUIRE THE SPLITTING OF A CAUSE OF ACTION AND SHALL NOT INTERFERE WITH THE ORDERLY ADMINISTRATION OF JUSTICE.

(10) A COMPLAINT OR AMENDMENT OF A COMPLAINT FILED AFTER NOTICE HAS BEEN GIVEN IN COMPLIANCE WITH THIS SECTION SHALL NOT BE DISMISSED OR STRICKEN ON THE BASIS THAT IT CONTAINS ALLEGATIONS, THEORIES, CLAIMS, OR BREACHES OF THE STANDARD OF PRACTICE OR CARE NOT OTHERWISE CONTAINED IN THE NOTICE.

(11) IF DURING THE 182-DAY NOTICE PERIOD REQUIRED UNDER SUBSECTION (2), A STATUTE OF LIMITATIONS OR REPOSE OTHERWISE WOULD HAVE BECOME APPLICABLE AS A BAR TO THE CLAIM BUT FOR THE NOTICE FILED UNDER THIS SECTION, AS PROVIDED UNDER SECTION 5856(D), THEN THE CLAIMANT SHALL FILE A COMPLAINT NO LATER THAN 182 DAYS AFTER THE EXPIRATION OF THE 182-DAY NOTICE PERIOD REQUIRED UNDER SUBSECTION (2).

(12) WITHIN 126 DAYS AFTER RECEIPT OF NOTICE UNDER THIS SECTION, THE HEALTH PROFESSIONAL OR HEALTH FACILITY AGAINST WHOM THE CLAIM IS MADE SHALL FURNISH TO THE CLAIMANT OR HIS OR HER AUTHORIZED REPRESENTATIVE A WRITTEN RESPONSE THAT CONTAINS A STATEMENT OF EACH OF THE FOLLOWING:

(A) THE FACTUAL BASIS FOR THE DEFENSE TO THE CLAIM.

(B) THE STANDARD OF PRACTICE OR CARE THAT THE HEALTH PROFESSIONAL OR HEALTH FACILITY CLAIMS TO BE APPLICABLE TO THE ACTION AND THAT THE HEALTH PROFESSIONAL OR HEALTH FACILITY COMPLIED WITH THAT STANDARD.

(C) THE MANNER IN WHICH IT IS CLAIMED BY THE HEALTH PROFESSIONAL OR HEALTH FACILITY THAT THERE WAS COMPLIANCE WITH THE APPLICABLE STANDARD OF PRACTICE OR CARE.

(D) THE MANNER IN WHICH THE HEALTH PROFESSIONAL OR HEALTH FACILITY CONTENDS THAT THE ALLEGED INJURY OR ALLEGED DAMAGE TO THE CLAIMANT IS NOT RELATED TO THE CARE AND TREATMENT RENDERED.

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RETAINED, THE NOTICE MAY BE  
IE BASIS FOR THE CLAIM WAS  
THE NOTICE TO DESCRIBE THE

TITUTES NOTICE TO A HEALTH  
ALTH FACILITY OR AGENCY, OR  
NCY WHO MAY BE JOINED AS A  
ACTICE IS COMMENCED.  
FACILITY UNDER THIS SECTION  
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LE STANDARD OF PRACTICE OR  
FACILITY.  
CHIEVE COMPLIANCE WITH THE

ANDARD OF PRACTICE OR CARE  
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OTICE ACCESS TO THE MEDICAL  
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TH FACILITY SHALL ALLOW THE  
FACILITY'S MEDICAL RECORDS

AL OR HEALTH FACILITY UNDER  
AY PERIODS IS NOT ALLOWED,  
JENTLY FILED FOR THAT CLAIM  
R HEALTH FACILITIES NOTIFIED.  
HIS SECTION AND AN ACTION  
DOES NOT APPLY TO THE ACTION  
TO THE ACTION. THE NOTICE  
IG OF A CAUSE OF ACTION AND  
JUSTICE.

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SUBSECTION (2), A STATUTE OF  
CABLE AS A BAR TO THE CLAIM  
DER SECTION 5856(D), THEN THE  
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LTH PROFESSIONAL OR HEALTH

SSIONAL OR HEALTH FACILITY  
OF PRACTICE OR CARE.  
ALTH FACILITY CONTENTS THAT  
NOT RELATED TO THE CARE AND

(13) IF THE CLAIMANT DOES NOT RECEIVE THE WRITTEN RESPONSE REQUIRED UNDER  
SUBSECTION (12) WITHIN THE REQUIRED 126-DAY TIME PERIOD, THE CLAIMANT MAY COMMENCE AN  
ACTION ALLEGING MEDICAL MALPRACTICE UPON THE EXPIRATION OF THE 126-DAY PERIOD."

The question being on the adoption of the amendment offered by Rep. Mathieu,  
Rep. Bandstra demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendment offered by Rep. Mathieu,

Rep. Mathieu moved that consideration of the amendment be postponed temporarily.

The motion prevailed.

Rep. Ciaramitaro moved to amend the bill as follows:

1. Amend page 2, line 9, by striking out "THE TOTAL AMOUNT OF".

2. Amend page 2, line 22, by striking out "RECOVERABLE BY ALL PLAINTIFFS, RESULTING FROM THE  
NEGLIGENCE OF ALL DEFENDANTS,".

The question being on the adoption of the amendments offered by Rep. Ciaramitaro,

Rep. Bandstra demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendments offered by Rep. Ciaramitaro,

The amendments were not adopted, a majority of the members serving not voting therefor, by yeas and nays, as  
follows:

## Roll Call No. 238

Yeas—31

Agee  
Anthony  
Baade  
Barns  
Berman  
Bryant  
Ciaramitaro  
Clack

DeMars  
Freeman  
Gire  
Gubow  
Harrison  
Hertel  
Hollister  
Hood

Jersevic  
Jondahl  
Leland  
Mathieu  
Murphy  
Olshove  
Pitoniak  
Points

Profit  
Rivers  
Saunders  
Scott  
Varga  
Wallace  
Yokich

Nays—66

Allen  
Alley  
Bandstra  
Banks  
Bender  
Bobier  
Bodem  
Brackenridge  
Brown  
Bullard  
Byrum  
Crissman  
Cropsey  
Curtis  
Dalman  
DeLange  
Dobb

Dolan  
Fitzgerald  
Gagliardi  
Galloway  
Gernaat  
Gilmer  
Gnodtke  
Goschka  
Griffin  
Gustafson  
Hammerstrom  
Hill  
Hillemonds  
Horton  
Jacobetti  
Jamian  
Jaye

Johnson  
Kaza  
Keith  
Kukuk  
Llewellyn  
London  
Lowe  
Martin  
McBryde  
McManus  
McNutt  
Middaugh  
Middleton  
Munsell  
Nye  
Owen

Oxender  
Palamara  
Porreca  
Randall  
Rhead  
Rocca  
Schroer  
Shepich  
Shugars  
Sikkema  
Stille  
Voorhees  
Vorva  
Walberg  
Wetters  
Whyman

In The Chair: Gire

Rep. Gagliardi moved that the House proceed to the Gubow motion made previously to reconsider the Gubow amendments Nos. 1 through 5 and No. 7 (see p. 956 of today's Journal.)

The motion prevailed.

The question being on the motion made previously by Rep. Gubow to reconsider the Gubow amendments Nos. 1 through 5 and No. 7,

The motion prevailed.

The question being on the adoption of the amendments Nos. 1 through 5 and No. 7 offered previously by Rep. Gubow, Rep. Bandstra demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendments Nos. 1 through 5 and No. 7 offered previously by Rep. Gubow, The amendments were adopted, a majority of the members serving voting therefor, by yeas and nays, as follows:

## Roll Call No. 239

Yeas—57

Agee	Freeman	Keith	Profit
Allen	Gagliardi	Leland	Rivers
Anthony	Gire	Lowe	Saunders
Baade	Griffin	Mathieu	Schroer
Barns	Gubow	McNutt	Scott
Berman	Harder	Murphy	Shepich
Brown	Harrison	Nye	Varga
Byrum	Hertel	Olshove	Vorva
Ciaramitaro	Hollister	O'Neill	Walberg
Clack	Hood	Owen	Wallace
Cropsey	Jacobetti	Palamara	Wetters
Curtis	Jaye	Pitoniak	Willard
DeMars	Jersevic	Points	Yokich
Dolan	Jondahl	Porreca	Young, R.
Emerson			

Nays—44

Alley	DeLange	Hillemonds	Middaugh
Bandstra	Dobb	Horton	Middleton
Banks	Fitzgerald	Jamian	Oxender
Bender	Galloway	Johnson	Randall
Bobier	Gernaat	Kaza	Rhead
Bodem	Gilmer	Kukuk	Rocca
Brackenridge	Gnodtke	Llewellyn	Shugars
Bryant	Goschka	London	Sikkema
Bullard	Gustafson	Martin	Stille
Crissman	Hammerstrom	McBryde	Voorhees
Dalman	Hill	McManus	Whyman

In The Chair: Gire

Rep. Gagliardi moved that consideration of the bill be postponed temporarily.  
The motion prevailed.

Reps. Profit, Byrum, Porreca, Gire, Baade, Bullard, Voorhees, DeMars, Yokich, Palamara and Berman introduced **House Bill No. 4673, entitled**

A bill to amend sections 82 and 234d of Act No. 328 of the Public Acts of 1931, entitled as amended "The Michigan penal code," section 234d as amended by Act No. 218 of the Public Acts of 1992, being sections 750.82 and 750.234d of the Michigan Compiled Laws; and to add sections 235a, 237a, and 237b.

The bill was read a first time by its title and referred to the Committee on Judiciary.

Reps. Profit, Byrum, Porreca, Gire, Baade, Bullard, Voorhees, DeMars, Yokich, Palamara and Berman introduced **House Bill No. 4674, entitled**

A bill to amend Act No. 59 of the Public Acts of 1935, entitled as amended "An act to provide for the public safety; to create the Michigan state police, and provide for the organization thereof; to transfer thereto the offices, duties and powers of the state fire marshal, the state oil inspector, the department of the Michigan state police as heretofore organized, and the department of public safety; to create the office of commissioner of the Michigan state police; to provide for an acting commissioner and for the appointment of the officers and members of said department; to prescribe their powers, duties, and immunities; to provide the manner of fixing their compensation; to provide for their removal from office; and to repeal Act No. 26 of the Public Acts of 1919, being sections 556 to 562, inclusive, of the Compiled Laws of 1929, and Act No. 123 of the Public Acts of 1921, as amended, being sections 545 to 555, inclusive, of the Compiled Laws of 1929," as amended, being sections 28.1 to 28.15 of the Michigan Compiled Laws, by adding section 16.

The bill was read a first time by its title and referred to the Committee on Judiciary.

Reps. Profit, Byrum, Porreca, Gire, Baade, Bullard, Voorhees, DeMars, Yokich, Palamara and Berman introduced **House Bill No. 4675, entitled**

A bill to create the school security task force within the department of education; to prescribe its powers and duties; and to repeal this act on a specific date.

The bill was read a first time by its title and referred to the Committee on Education.

Rep. Griffin introduced **House Bill No. 4676, entitled**

A bill to amend section 27 of Act No. 206 of the Public Acts of 1893, entitled as amended "The general property tax act," as amended by Act No. 283 of the Public Acts of 1989, being section 211.27 of the Michigan Compiled Laws.

The bill was read a first time by its title and referred to the Committee on Taxation.

By unanimous consent the House returned to the order of  
**Second Reading of Bills**

**Senate Bill No. 270, entitled**

A bill to amend sections 1483, 2169, 2912a, 2912d, 2912e, 5838a, 5851, 5856, and 6013 of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judiciary act of 1961," sections 1483, 2169, 2912d, 2912e, and 5838a as added and section 5851 as amended by Act No. 178 of the Public Acts of 1986 and section 6013 as amended by Act No. 50 of the Public Acts of 1987, being sections 600.1483, 600.2169, 600.2912a, 600.2912d, 600.2912e, 600.5838a, 600.5851, 600.5856, and 600.6013 of the Michigan Compiled Laws; and to add sections 955, 2912b, 2912f, and 2912g.

(The bill was read a second time, substitute (H-1) adopted, substitute (H-2) adopted and postponed temporarily on April 21, see p. 897 of House Journal No. 32; Nye amendments adopted, reconsidered and amendments postponed temporarily, Nye amendment offered and postponed temporarily, Profit amendments offered and postponed temporarily, Cropsey amendment not adopted, motion made to reconsider and postponed temporarily and bill postponed temporarily on April 22, see p. 922 of House Journal No. 33; Bennane amendment offered and postponed temporarily, Curtis amendment offered and postponed temporarily, Gubow amendments offered and postponed temporarily, Yokich amendment offered and postponed temporarily, Mathieu amendment offered and postponed temporarily and bill postponed temporarily on April 27, see p. 951 of House Journal No. 34.)

Rep. Wallace moved to amend the bill as follows:

1. Amend page 13, line 17, after "BY" by striking out the balance of the sentence and inserting "THE PLAINTIFF'S ATTORNEY."

Yokich, Palamara and Berman introduced

f 1931, entitled as amended "The Michigan  
f 1992, being sections 750.82 and 750.234d  
n Judiciary.

Yokich, Palamara and Berman introduced

ed "An act to provide for the public safety;  
f; to transfer thereto the offices, duties and  
of the Michigan state police as heretofore  
missioner of the Michigan state police; to  
cers and members of said department; to  
ing their compensation; to provide for their  
being sections 556 to 562, inclusive, of the  
ended, being sections 545 to 555, inclusive,  
of the Michigan Compiled Laws, by adding

n Judiciary.

Yokich, Palamara and Berman introduced

ucation; to prescribe its powers and duties;

n Education.

ntitled as amended "The general property  
n 211.27 of the Michigan Compiled Laws.  
1 Taxation.

1, 5856, and 6013 of Act No. 236 of the  
" sections 1483, 2169, 2912d, 2912e, and  
Acts of 1986 and section 6013 as amended  
2169, 600.2912a, 600.2912d, 600.2912e,  
ws; and to add sections 955, 2912b, 2912f,

2) adopted and postponed temporarily on  
reconsidered and amendments postponed  
it amendments offered and postponed  
ler and postponed temporarily and bill  
nnane amendment offered and postponed  
ow amendments offered and postponed  
hieu amendment offered and postponed  
Journal No. 34.)

e of the sentence and inserting "THE

2. Amend page 16, line 4, after "BY" by striking out the balance of the sentence and inserting "THE DEFENDANT'S ATTORNEY."

The question being on the adoption of the amendments offered by Rep. Wallace,

Rep. Bandstra demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendments offered by Rep. Wallace,

The amendments were not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

## Roll Call No. 240

Yeas—40

Agee  
Anthony  
Baade  
Barns  
Bennane  
Berman  
Brown  
Byrum  
Ciaramitaro  
Clack

Cropsey  
Curtis  
DeMars  
Freeman  
Gire  
Gubow  
Harder  
Harrison  
Hollister  
Hood

Jersevic  
Jondahl  
Kilpatrick  
Mathieu  
Murphy  
Olshove  
O'Neill  
Palamara  
Pitoniak  
Points

Profit  
Rivers  
Saunders  
Schroer  
Scott  
Vorva  
Wallace  
Wetters  
Willard  
Yokich

Nays—60

Allen  
Alley  
Bandstra  
Bankes  
Bender  
Bodem  
Brackenridge  
Bryant  
Bullard  
Crissman  
Dalman  
DeLange  
Dobb  
Dolan  
Fitzgerald

Gagliardi  
Galloway  
Gernaat  
Gilmer  
Gnodtke  
Goschka  
Griffin  
Gustafson  
Hammerstrom  
Hertel  
Hill  
Hillemonds  
Horton  
Jacobetti  
Jamian

Jaye  
Johnson  
Kaza  
Keith  
Kukuk  
Leland  
Llewellyn  
London  
Lowe  
Martin  
McBryde  
McManus  
McNutt  
Middaugh  
Middleton

Munsell  
Nye  
Owen  
Oxender  
Porreca  
Randall  
Rhead  
Rocca  
Shepich  
Shugars  
Sikkema  
Stille  
Voorhees  
Whyman  
Young, R.

In The Chair: Hertel

Rep. Emerson entered the House and took his seat.

Rep. Jondahl moved to amend the bill as follows:

1. Amend page 2, line 25, after "APPLY" by striking out "AS DETERMINED BY THE COURT PURSUANT TO SECTION 6304".

2. Amend page 3, line 1, by inserting:

"(A) THERE HAS BEEN A DEATH." and renumbering the remaining subdivisions.

3. Amend page 3, following line 11, by inserting:

"(D) THERE HAS BEEN AN ALTERATION, DESTRUCTION, OR FALSIFICATION OF A MEDICAL RECORD OR CHART IN VIOLATION OF SECTION 492A OF THE MICHIGAN PENAL CODE, ACT NO. 368 OF THE PUBLIC ACTS OF 1931, BEING SECTION 750.492A OF THE MICHIGAN COMPILED LAWS."

The question being on the adoption of the amendments offered by Rep. Jondahl,  
 Rep. Yokich demanded the yeas and nays.  
 The demand was supported.  
 The question being on the adoption of the amendments offered by Rep. Jondahl,  
 After debate,  
 Rep. Randall demanded the previous question.  
 The demand was supported.  
 The question being, "Shall the main question now be put?"  
 The previous question was ordered.  
 The question being on the adoption of the amendments offered by Rep. Jondahl,  
 The amendments were not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

## Roll Call No. 241

## Yeas—41

Agee	DeMars	Jondahl	Rivers
Anthony	Freeman	Kilpatrick	Saunders
Baade	Gire	Leland	Schroer
Barns	Gubow	Mathieu	Scott
Bennane	Harder	McBryde	Varga
Berman	Harrison	Murphy	Vorva
Brown	Hertel	Olshove	Wallace
Byrum	Hollister	O'Neill	Wetters
Ciaramitaro	Hood	Pitoniak	Willard
Clack	Jersevic	Points	Yokich
Curtis			

## Nays—58

Allen	Galloway	Kaza	Oxender
Alley	Gernaat	Keith	Porreca
Bandstra	Gilmer	Kukuk	Profit
Bankes	Gnodtke	Llewellyn	Randall
Bender	Goschka	London	Rhead
Bobier	Griffin	Lowe	Rocca
Bodem	Gustafson	Martin	Shepich
Brackenridge	Hammerstrom	McManus	Shugars
Bullard	Hill	McNutt	Sikkema
Crissman	Hillegonds	Middaugh	Stille
Cropsey	Horton	Middleton	Voorhees
Dalman	Jacobetti	Munsell	Walberg
Dobb	Jamian	Nye	Whyman
Dolan	Jaye	Owen	Young, R.
Fitzgerald	Johnson		

In The Chair: Hertel

Rep. Jondahl moved to amend the bill as follows:

1. Amend page 3, line 1, by inserting:  
 "(A) THERE HAS BEEN A DEATH." and renumbering the remaining subdivisions.
2. Amend page 3, following line 11, by inserting:  
 "(D) THERE HAS BEEN AN ALTERATION, DESTRUCTION, OR FALSIFICATION OF A MEDICAL RECORD OR CHART IN VIOLATION OF SECTION 492A OF THE MICHIGAN PENAL CODE, ACT NO. 368 OF THE PUBLIC ACTS OF 1931, BEING SECTION 750.492A OF THE MICHIGAN COMPILED LAWS."

idahl, The question being on the adoption of the amendments offered by Rep. Jondahl,  
 Rep. Jondahl demanded the yeas and nays.  
 idahl, The demand was supported.  
 The question being on the adoption of the amendments offered by Rep. Jondahl,  
 After debate,  
 Rep. Palamara demanded the previous question.  
 The demand was supported.  
 The question being, "Shall the main question now be put?"  
 The previous question was ordered.  
 The question being on the adoption of the amendments offered by Rep. Jondahl,  
 The amendments were not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

## Roll Call No. 242

## Yeas—45

Rivers  
 Saunders  
 Schroer  
 Scott  
 Varga  
 Vorva  
 Wallace  
 Wetters  
 Willard  
 Yokich

Anthony  
 Baade  
 Barns  
 Bennane  
 Berman  
 Brown  
 Byrum  
 Ciaramitaro  
 Clack  
 Cropsey  
 Curtis  
 DeMars

Emerson  
 Freeman  
 Gagliardi  
 Gire  
 Gubow  
 Harder  
 Harrison  
 Hertel  
 Hollister  
 Hood  
 Jersevic

Kilpatrick  
 Leland  
 Mathieu  
 McBryde  
 Murphy  
 Nye  
 Olshove  
 O'Neill  
 Palamara  
 Pitoniak  
 Points

Rivers  
 Saunders  
 Schroer  
 Scott  
 Varga  
 Vorva  
 Wallace  
 Wetters  
 Willard  
 Yokich  
 Young, R.

## Nays—54

Oxender  
 Porreca  
 Profit  
 Randall  
 Rhead  
 Rocca  
 Shepich  
 Shugars  
 Sikkema  
 Stille  
 Voorhees  
 Walberg  
 Whyman  
 Young, R.

Allen  
 Alley  
 Bandstra  
 Bankes  
 Bender  
 Bobier  
 Bodem  
 Brackenridge  
 Bullard  
 Crissman  
 Dalman  
 DeLange  
 Dobb  
 Dolan

Fitzgerald  
 Galloway  
 Gernaat  
 Gilmer  
 Gnodtke  
 Goschka  
 Griffin  
 Gustafson  
 Hammerstrom  
 Hill  
 Hillegonds  
 Horton  
 Jacobetti  
 Jamian

Jaye  
 Johnson  
 Kaza  
 Keith  
 Kukuk  
 Llewellyn  
 London  
 Lowe  
 Martin  
 McManus  
 McNutt  
 Middaugh  
 Middleton

Munsell  
 Oxender  
 Porreca  
 Randall  
 Rhead  
 Rocca  
 Shepich  
 Shugars  
 Sikkema  
 Stille  
 Voorhees  
 Walberg  
 Whyman

In The Chair: Hertel

Rep. McNutt moved to amend the bill as follows:

1. Amend page 2, line 23, after "EXCEED" by striking out "\$250,000.00" and inserting "\$280,000.00".

The question being on the adoption of the amendment offered by Rep. McNutt,

Rep. McNutt demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendment offered by Rep. McNutt,

The amendment was adopted, a majority of the members serving voting therefor, by yeas and nays, as follows:

divisions.

FALSIFICATION OF A MEDICAL  
 AN PENAL CODE, ACT NO. 368 OF  
 AN COMPILED LAWS."

## Roll Call No. 243

Yeas—59

Agee	Curtis	Kaza	Points
Allen	DeMars	Kilpatrick	Profit
Alley	Dolan	Leland	Randall
Anthony	Emerson	Llewellyn	Rivers
Baade	Freeman	Lowe	Saunders
Barns	Gagliardi	Martin	Schroer
Bender	Galloway	Mathieu	Varga
Bennane	Gire	McManus	Vorva
Berman	Gubow	McNutt	Wallace
Bobier	Harder	Middaugh	Wetters
Brown	Harrison	Murphy	Whyman
Bullard	Hertel	Nye	Willard
Byrum	Hollister	Olshove	Yokich
Clack	Jacobetti	Owen	Young, R.
Cropsey	Jersevic	Pitoniak	

Nays—37

Bandstra	Gilmer	Jamian	Oxender
Bankes	Gnodtke	Jaye	Porreca
Bodem	Goschka	Johnson	Rhead
Brackenridge	Griffin	Keith	Rocca
Crissman	Gustafson	Kukuk	Shepich
Dalman	Hammerstrom	London	Shugars
DeLange	Hill	McBryde	Sikkema
Dobb	Hillegonds	Middleton	Stille
Fitzgerald	Horton	Munsell	Voorhees
Gernaat			

In The Chair: Hertel

Rep. Wetters moved to amend the bill as follows:

L Amend page 4, following line 2, by inserting:

"(5) IF DAMAGES FOR ECONOMIC LOSS IN AN ACTION ALLEGING MEDICAL MALPRACTICE CANNOT READILY BE ASCERTAINED BY THE TRIER OF FACT, THE TRIER OF FACT SHALL CALCULATE DAMAGES FOR ECONOMIC LOSS BASED ON AN AMOUNT THAT IS EQUAL TO THE STATE AVERAGE MEDIAN FAMILY INCOME AS REPORTED IN THE IMMEDIATELY PRECEDING FEDERAL DECENNIAL CENSUS AND ADJUSTED AND CERTIFIED BY THE STATE TREASURER."

The question being on the adoption of the amendment offered by Rep. Wetters,

Rep. Bandstra demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendment offered by Rep. Wetters,

The amendment was not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

## Roll Call No. 244

Yeas—39

Agee	Emerson	Mathieu	Schroer
Anthony	Freeman	Murphy	Scott
Baade	Gubow	Olshove	Shepich
Barns	Harder	O'Neill	Varga
Bennane	Harrison	Palamara	Vorva

Points  
Profit  
Randall  
Rivers  
Saunders  
Schroer  
Varga  
Vorva  
Wallace  
Wetters  
Whyman  
Willard  
Yokich  
Young, R.

Oxender  
Porreca  
Rhead  
Rocca  
Shepich  
Shugars  
Sikkema  
Stille  
Voorhees

Berman  
Brown  
Byrum  
Clack  
DeMars

Hertel  
Hollister  
Hood  
Jondahl  
Kilpatrick

Pitoniak  
Points  
Profit  
Rivers  
Saunders

Wallace  
Wetters  
Willard  
Yokich

Nays—61

Allen  
Alley  
Bandstra  
Banks  
Bender  
Bobier  
Bodem  
Brackenridge  
Bullard  
Crissman  
Cropsey  
Curtis  
Dalman  
DeLange  
Dobb  
Dolan

Fitzgerald  
Gagliardi  
Galloway  
Gernaat  
Gilmer  
Gnodtke  
Goschka  
Griffin  
Gustafson  
Hammerstrom  
Hill  
Hillegonds  
Horton  
Jacobetti  
Jamian

Jaye  
Jersevic  
Johnson  
Kaza  
Keith  
Kukuk  
Llewellyn  
London  
Lowe  
Martin  
McBryde  
McManus  
McNutt  
Middaugh  
Middleton

Munsell  
Nye  
Owen  
Oxender  
Porreca  
Randall  
Rhead  
Rocca  
Shugars  
Sikkema  
Stille  
Voorhees  
Walberg  
Whyman  
Young, R.

In The Chair: Hertel

Rep. Cropsey moved to amend the bill as follows:

1. Amend page 28, line 10, after "(1)" by striking out "Interest" and inserting "EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (13), INTEREST".

2. Amend page 32, following line 6, by inserting:

"(13) IN A CIVIL ACTION BASED ON MEDICAL MALPRACTICE, IF THE PLAINTIFF HAS REJECTED A MEDIATION EVALUATION UNDER CHAPTER 49, THE COURT SHALL NOT AWARD INTEREST ON A MONEY JUDGMENT RECOVERED BY THE PLAINTIFF, UNLESS THE DEFENDANT HAS ALSO REJECTED THE MEDIATION EVALUATION OR THE VERDICT IS MORE FAVORABLE TO THE PLAINTIFF AS DETERMINED UNDER SECTION 4921. IN A CIVIL ACTION BASED ON MEDICAL MALPRACTICE, IF THE DEFENDANT HAS REJECTED A MEDIATION EVALUATION UNDER CHAPTER 49, THE COURT SHALL AWARD 2 TIMES THE INTEREST CALCULATED UNDER THIS SECTION ON A MONEY JUDGMENT RECOVERED BY THE PLAINTIFF, UNLESS THE PLAINTIFF HAS ALSO REJECTED THE MEDIATION EVALUATION OR THE VERDICT IS MORE FAVORABLE TO THE DEFENDANT AS DETERMINED UNDER SECTION 4921." and renumbering the remaining subsection.

The question being on the adoption of the amendments offered by Rep. Cropsey,

Rep. Bandstra demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendments offered by Rep. Cropsey,

The amendments were not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

Roll Call No. 245

Yeas—19

Schroer  
Scott  
Shepich  
Varga  
Vorva

Bennane  
Brown  
Byrum  
Clack  
Cropsey

Gubow  
Harrison  
Hollister  
Jaye  
Jersevic

Lowe  
Mathieu  
Murphy  
Nye  
Points

Saunders  
Wallace  
Yokich  
Young, R.

ING MEDICAL MALPRACTICE  
ER OF FACT SHALL CALCULATE  
QUAL TO THE STATE AVERAGE  
CEDING FEDERAL DECENNIAL

ing therefor, by yeas and nays, as

## Nays—72

Agee	Dolan	Jacobetti	Palamara
Alley	Fitzgerald	Jamian	Porreca
Anthony	Freeman	Johnson	Profit
Baade	Gagliardi	Kaza	Randall
Bandstra	Galloway	Keith	Rhead
Banks	Gernaat	Kukuk	Rivers
Barns	Gilmer	Llewellyn	Rocca
Bender	Gire	London	Schroer
Berman	Gnodtke	Martin	Shepich
Bobier	Goschka	McBryde	Shugars
Bodem	Griffin	McManus	Stille
Brackenridge	Gustafson	McNutt	Varga
Crissman	Hammerstrom	Middaugh	Voorhees
Curtis	Harder	Middleton	Vorva
Dalman	Hertel	Munsell	Walberg
DeLange	Hill	Olshove	Wetters
DeMars	Hillegonds	Owen	Whyman
Dobb	Horton	Oxender	Willard

In The Chair: Hertel

Rep. Wallace moved to amend the bill as follows:

1. Amend page 2, line 22, by striking out "RECOVERABLE BY ALL PLAINTIFFS, RESULTING FROM THE NEGLIGENCE OF ALL DEFENDANTS,".

The question being on the adoption of the amendment offered by Rep. Wallace,

Rep. Bandstra demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendment offered by Rep. Wallace,

The amendment was not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

## Roll Call No. 246

## Yeas—31

Agee	Clack	Hood	Points
Anthony	DeMars	Jondahl	Rivers
Barns	Emerson	Kilpatrick	Saunders
Bennane	Gire	Leland	Scott
Berman	Gubow	Murphy	Varga
Brown	Harrison	Olshove	Wallace
Byrum	Hertel	O'Neill	Willard
Ciaramitaro	Hollister	Pitoniak	

## Nays—65

Allen	Freeman	Johnson	Palamara
Alley	Galloway	Kaza	Porreca
Bandstra	Gernaat	Keith	Profit
Banks	Gilmer	Kukuk	Randall
Bender	Gnodtke	Llewellyn	Rhead
Bobier	Goschka	London	Rocca

Palamara  
Porreca  
Profit  
Randall  
Rhead  
Rivers  
Rocca  
Schroer  
Shepich  
Shugars  
Stille  
Varga  
Voorhees  
Vorva  
Walberg  
Wetters  
Whyman  
Willard

Bodem  
Brackenridge  
Bullard  
Crissman  
Cropsey  
Curtis  
Dalman  
DeLange  
Dobb  
Dolan  
Fitzgerald

Griffin  
Gustafson  
Hammerstrom  
Hill  
Hillegonds  
Horton  
Jacobetti  
Jamian  
Jaye  
Jersevic

Lowe  
Martin  
McBryde  
McManus  
McNutt  
Middaugh  
Middleton  
Munsell  
Nye  
Owen

Shepich  
Shugars  
Sikkema  
Stille  
Voorhees  
Vorva  
Walberg  
Wetters  
Whyman  
Young, R.

In The Chair: Hertel

Rep. Harder moved that Rep. Clack be granted a leave of absence from the balance of today's session.  
The motion prevailed.

Rep. Ciaramitaro moved to amend the bill as follows:

1. Amend page 2, line 22, after "PLAINTIFFS," by striking out "RESULTING FROM THE NEGLIGENCE OF ALL DEFENDANTS, SHALL NOT EXCEED \$250,000.00 UNLESS, AS THE RESULT OF THE NEGLIGENCE OF 1 OR MORE OF THE DEFENDANTS," and inserting "FOR EACH ACT OF MEDICAL MALPRACTICE SHALL NOT EXCEED \$250,000.00 UNLESS,".

The question being on the adoption of the amendment offered by Rep. Ciaramitaro,

Rep. Ciaramitaro demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendment offered by Rep. Ciaramitaro,

The amendment was not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

#### Roll Call No. 247

Yeas—33

Points  
Rivers  
Saunders  
Scott  
Varga  
Wallace  
Willard

Agee  
Anthony  
Baade  
Barns  
Bennane  
Berman  
Brown  
Byrum  
Ciaramitaro

DeMars  
Emerson  
Gire  
Gubow  
Harrison  
Hertel  
Hollister  
Hood

Jondahl  
Kilpatrick  
Leland  
Mathieu  
Murphy  
Olshove  
O'Neill  
Points

Rivers  
Saunders  
Scott  
Varga  
Wallace  
Willard  
Yokich  
Young, R.

Nays—67

Palamara  
Porreca  
Profit  
Randall  
Rhead  
Rocca

Allen  
Alley  
Bandstra  
Banks  
Bender  
Bobier

Freeman  
Galloway  
Germaat  
Gilmer  
Gnodtke  
Goschka

Kaza  
Keith  
Kukuk  
Llewellyn  
London  
Lowe

Pitoniak  
Porreca  
Profit  
Randall  
Rhead  
Rocca

LAINTIFFS, RESULTING FROM THE

ace,

ace,

voting therefor, by yeas and nays, as

Bodem	Griffin	Martin	Schroer
Brackenridge	Gustafson	McBryde	Shepich
Bullard	Hammerstrom	McManus	Shugars
Crissman	Hill	McNutt	Sikkema
Cropsey	Hillemonds	Middaugh	Stille
Curtis	Horton	Middleton	Voorhees
Dalman	Jacobetti	Munsell	Vorva
DeLange	Jamian	Nye	Walberg
Dobb	Jaye	Owen	Wetters
Dolan	Jersevic	Oxender	Whyman
Fitzgerald	Johnson	Palamara	

In The Chair: Hertel

Rep. Varga asked and obtained leave of absence from the balance of today's session.

Rep. Rivers moved to amend the bill as follows:

1. Amend page 15, line 23, after "THAN" by striking out "91 DAYS" and inserting "21 DAYS".

The question being on the adoption of the amendment offered by Rep. Rivers,

Rep. Bandstra demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendment offered by Rep. Rivers,

The amendment was not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

#### Roll Call No. 248

#### Yeas—34

Agce	DeMars	Leland	Proffit
Anthony	Gire	Mathieu	Rivers
Baade	Gubow	Murphy	Saunders
Barns	Harrison	Olshove	Schroer
Bennane	Hollister	O'Neill	Wallace
Berman	Hood	Palamara	Willard
Brown	Johnson	Pitoniak	Yokich
Byrum	Jondahl	Points	Young, R.
Ciaramitaro	Kilpatrick		

#### Nays—64

Allen	Fitzgerald	Jamian	Nye
Alley	Freeman	Jaye	Owen
Bandstra	Galloway	Jersevic	Oxender
Bankes	Gernaat	Kaza	Porreca
Bender	Gilmer	Keith	Randall
Bobier	Gnodtke	Kukuk	Rhead
Bodem	Goschka	Llewellyn	Rocca
Brackenridge	Griffin	London	Shepich
Bullard	Gustafson	Lowe	Shugars
Crissman	Hammerstrom	Martin	Sikkema
Cropsey	Harder	McBryde	Stille

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Shugars  
Sikkema  
Stille  
Voorhees  
Vorva  
Walberg  
Wetters  
Whyman

Curtis  
Dalman  
DeLange  
Dobb  
Dolan  
Hill  
Hillegonds  
Horton  
Jacobetti

Hertel  
Hill  
Hillegonds  
Horton  
Jacobetti

McManus  
McNutt  
Middaugh  
Middleton  
Munsell

Voorhees  
Vorva  
Walberg  
Wetters  
Whyman

In The Chair: Hertel

Rep. Yokich moved to amend the bill as follows:

1. Amend page 26, line 22, after "(7)" by striking out the balance of the line and inserting "If".
2. Amend page 26, line 25, after "HER" by striking out "EIGHTH" and inserting "THIRTEENTH".
3. Amend page 27, line 1, by striking out "TENTH" and inserting "FIFTEENTH".
4. Amend page 27, line 5, after "HER" by striking out "EIGHTH" and inserting "THIRTEENTH".
5. Amend page 27, line 7, by striking out all of subsection (8).

The question being on the adoption of the amendments offered by Rep. Yokich,

Rep. Bandstra demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendments offered by Rep. Yokich,

The amendments were not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

# Roll Call No. 249

Yeas—52

day's session.

' and inserting "21 DAYS".  
Rivers,

Rivers,  
not voting therefor, by yeas and nays, as

Profit  
Rivers  
Saunders  
Schroer  
Wallace  
Willard  
Yokich  
Young, R.

Agee  
Alley  
Anthony  
Baade  
Bennane  
Berman  
Brown  
Byrum  
Ciaramitaro  
Curtis  
DeMars  
Emerson  
Freeman

Gagliardi  
Gire  
Griffin  
Gubow  
Harder  
Harrison  
Hertel  
Hollister  
Hood  
Jacobetti  
Jersevic  
Jondahl  
Keith

Kilpatrick  
Leland  
Llewellyn  
Mathieu  
Murphy  
Nye  
Olshove  
O'Neill  
Owen  
Palamara  
Pitoniak  
Points  
Porreca

Profit  
Rivers  
Saunders  
Schroer  
Scott  
Shepich  
Vorva  
Wallace  
Wetters  
Whyman  
Willard  
Yokich  
Young, R.

Nays—48

Nye  
Owen  
Oxender  
Porreca  
Randall  
Rhead  
Rocca  
Shepich  
Shugars  
Sikkema  
Stille

Allen  
Bandstra  
Banks  
Bender  
Bobier  
Bodem  
Brackenridge  
Bullard  
Crissman  
Cropsey  
Dalman  
DeLange

Dobb  
Dolan  
Fitzgerald  
Galloway  
Gernaat  
Gilmer  
Gnodtke  
Goschka  
Gustafson  
Hammerstrom  
Hill  
Hillegonds

Horton  
Jamian  
Jaye  
Johnson  
Kaza  
Kukuk  
London  
Lowe  
Martin  
McBryde  
McManus  
McNutt

Middaugh  
Middleton  
Munsell  
Oxender  
Randall  
Rhead  
Rocca  
Shugars  
Sikkema  
Stille  
Voorhees  
Walberg

In The Chair: Hertel

Rep. Gubow moved to amend the bill as follows:

1. Amend page 11, line 1, after "WITHIN" by striking out "63" and inserting "56".
2. Amend page 11, line 7, after "WITHIN" by striking out "91" and inserting "56".

The motion prevailed and the amendments were adopted, a majority of the members serving voting therefor.

Reps. Yokich, Gubow and Bullard moved to amend the bill as follows:

1. Amend page 8, line 5, after "(2)" by striking out the balance of the subsection and inserting "IN AN ACTION ALLEGING MEDICAL MALPRACTICE, THE PLAINTIFF HAS THE BURDEN OF PROVING THAT HE OR SHE SUFFERED AN INJURY THAT MORE PROBABLY THAN NOT WAS PROXIMATELY CAUSED BY THE NEGLIGENCE OF THE DEFENDANT OR DEFENDANTS. IN AN ACTION ALLEGING MEDICAL MALPRACTICE, THE PLAINTIFF CANNOT RECOVER FOR LOSS OF AN OPPORTUNITY TO SURVIVE OR AN OPPORTUNITY TO ACHIEVE A BETTER RESULT UNLESS THE OPPORTUNITY WAS GREATER THAN 50%."

The motion prevailed and the amendment was adopted, a majority of the members serving voting therefor.

The question being on the adoption of the 9 amendments offered previously by Rep. Nye (see p. 922 of House Journal No. 33),

Rep. Nye moved that the amendments Nos. 1 through 3, Nos. 5 through 7 and No. 9 be considered separately.

The motion prevailed.

The question being on the adoption of the amendments Nos. 1 through 3, Nos. 5 through 7 and No. 9,

The amendments were adopted, a majority of the members serving voting therefor.

The question being on the adoption of the amendments Nos. 4 and 8 offered previously by Rep. Nye,

Rep. Nye demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendments Nos. 4 and 8 offered previously by Rep. Nye,

The amendments were not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

#### Roll Call No. 250

#### Yeas—49

Agee	DeMars	Jersevic	Points
Allen	Dolan	Jondahl	Profit
Anthony	Emerson	Kilpatrick	Rivers
Baade	Freeman	Leland	Saunders
Banks	Gagliardi	Mathieu	Schroer
Barns	Gire	McNutt	Scott
Bennane	Gubow	Murphy	Vorva
Berman	Harder	Nye	Wallace
Brown	Harrison	Olshove	Wetters
Byrum	Hertel	O'Neill	Willard
Caramitaro	Hollister	Palamara	Yokich
Cropsey	Hood	Pitoniak	Young, R.
Curtis			

#### Nays—52

Alley	Gernaat	Johnson	Owen
Bandstra	Gilmer	Kaza	Oxender
Bender	Gnodtke	Keith	Porreca
Bobier	Goschka	Kukuk	Randall
Bodem	Griffin	Llewellyn	Rhead
Brackenridge	Gustafson	London	Rocca
Bullard	Hammerstrom	Lowe	Shepich
Crissman	Hill	Martin	Shugars
Dalman	Hillegonds	McBryde	Sikkema
DeLange	Horton	McManus	Stille
Dobb	Jacobetti	Middaugh	Voorhees
Fitzgerald	Jamian	Middleton	Walberg
Galloway	Jaye	Munsell	Whyman

In The Chair: Hertel

ting "56".  
ting "56".  
members serving voting therefor.

section and inserting "IN AN ACTION  
DEN OF PROVING THAT HE OR SHE  
PROXIMATELY CAUSED BY THE  
ACTION ALLEGING MEDICAL  
N OPPORTUNITY TO SURVIVE OR  
PORTUNITY WAS GREATER THAN

members serving voting therefor.  
ily by Rep. Nye (see p. 922 of House

id No. 9 be considered separately.

s. 5 through 7 and No. 9,  
repor.  
previously by Rep. Nye,

previously by Rep. Nye,  
voting therefor, by yeas and nays, as

Points  
Profit  
Rivers  
Saunders  
Schroer  
Scott  
Vorva  
Wallace  
Wetters  
Willard  
Yokich  
Young, R.

Owen  
Oxender  
Porreca  
Randall  
Rhead  
Rocca  
Shepich  
Shugars  
Sikkema  
Stille  
Voorhees  
Walberg  
Whyman

The question being on the adoption of the amendment offered previously by Rep. Nye (see p. 923 of House Journal No. 33),

Rep. Nye withdrew the amendment.

The question being on the adoption of the amendment offered previously by Rep. Nye (see p. 925 of House Journal No. 33),

Rep. Nye withdrew the amendment.

The question being on the adoption of the amendments offered previously by Rep. Profit (see p. 926 of House Journal No. 33),

Rep. Profit withdrew the amendments.

The question being on the motion to reconsider the vote by which the House did not adopt the Cropsey amendment made previously by Rep. Hertel (see p. 927 of House Journal No. 33),

The motion prevailed.

The question being on the adoption of the amendment offered previously by Rep. Cropsey,

Rep. Bandstra demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendment offered previously by Rep. Cropsey,

The amendment was not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

## Roll Call No. 251

## Yeas—41

Agee  
Anthony  
Baade  
Barns  
Bennane  
Berman  
Brown  
Byrum  
Ciaramitaro  
Cropsey  
Curtis

DeMars  
Freeman  
Gagliardi  
Gire  
Gubow  
Harder  
Harrison  
Hertel  
Hollister  
Hood

Jersevic  
Jondahl  
Leland  
Mathieu  
Murphy  
Nye  
Olshove  
O'Neill  
Palamara  
Pitoniak

Points  
Profit  
Rivers  
Saunders  
Schroer  
Scott  
Vorva  
Wallace  
Wetters  
Willard

## Nays—55

Alley  
Bandstra  
Banks  
Bender  
Bobier  
Bodem  
Brackenridge  
Crissman  
Dalman  
DeLange  
Dobb  
Dolan  
Fitzgerald  
Galloway

Gernaat  
Gilmer  
Gnodtke  
Goschka  
Griffin  
Gustafson  
Hammerstrom  
Hill  
Hillemonds  
Horton  
Jacobetti  
Jamian  
Jaye  
Johnson

Kaza  
Keith  
Kukuk  
Llewellyn  
London  
Lowe  
Martin  
McBryde  
McManus  
McNutt  
Middaugh  
Middleton  
Munsell  
Owen

Oxender  
Porreca  
Randall  
Rhead  
Rocca  
Shepich  
Shugars  
Sikkema  
Stille  
Voorhees  
Walberg  
Whyman  
Yokich

In The Chair: Hertel

The question being on the adoption of the amendment offered previously by Rep. Profit (see p. 926 of House Journal No. 33),

Rep. Bandstra demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendment offered previously by Rep. Profit,  
 After debate,  
 Rep. O'Neill demanded the previous question.  
 The demand was supported.  
 The question being, "Shall the main question now be put?"  
 The previous question was ordered.  
 The question being on the adoption of the amendment offered previously by Rep. Profit,  
 The amendment was not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

## Roll Call No. 252

## Yeas—37

Agee	DeMars	Leland	Points
Anthony	Gire	Mathieu	Profit
Baade	Gubow	Murphy	Rocca
Barns	Harrison	Nye	Scott
Bennane	Hertel	Olshove	Shugars
Berman	Hollister	O'Neill	Varga
Brown	Jaye	Owen	Wallace
Byrum	Jondahl	Palamara	Willard
Ciaramitaro	Kaza	Pitoniak	Yokich
Curtis			

## Nays—61

Alley	Galloway	Jersevic	Porreca
Bandstra	Gernaat	Johnson	Randall
Bankes	Gilmer	Keith	Rhead
Bender	Gnodtke	Kukuk	Rivers
Bobier	Goschka	Llewellyn	Saunders
Bodem	Griffin	London	Schroer
Brackenridge	Gustafson	Lowe	Shepich
Bullard	Hammerstrom	Martin	Sikkema
Crissman	Harder	McBryde	Stille
Cropsey	Hill	McManus	Voorhees
Dalman	Hillemonds	McNutt	Vorva
DeLange	Hood	Middaugh	Walberg
Dobb	Horton	Middleton	Wetters
Dolan	Jacobetti	Munsell	Whyman
Fitzgerald	Jamian	Oxender	Young, R.
Freeman			

## In The Chair: Hertel

The question being on the adoption of the amendment offered previously by Rep. Bennane (see p. 953 of House Journal No. 34),  
 Rep. Bennane demanded the yeas and nays.  
 The demand was supported.  
 The question being on the adoption of the amendment offered previously by Rep. Bennane,  
 The amendment was not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

y Rep. Profit,

Rep. Profit,  
voting therefor, by yeas and nays, as

Points  
Profit  
Rocca  
Scott  
Shugars  
Varga  
Wallace  
Willard  
Yokich

Porreca  
Randall  
Rhead  
Rivers  
Saunders  
Schroer  
Shepich  
Sikkema  
Stille  
Voorhees  
Vorva  
Walberg  
Wetters  
Whyman  
Young, R.

Rep. Bennane (see p. 953 of House

p. Bennane,  
ing therefor, by yeas and nays, as

## Roll Call No. 253

Agee  
Anthony  
Baade  
Barns  
Bennane  
Berman  
Brown  
Byrum  
Ciaramitaro  
Curtis  
DeMars

Freeman  
Gagliardi  
Gire  
Gubow  
Harder  
Harrison  
Hertel  
Hollister  
Hood  
Jacobetti  
Jondahl

## Yeas—44

Keith  
Leland  
Mathieu  
Murphy  
Olshove  
O'Neill  
Owen  
Pitoniak  
Points  
Porreca  
Profit

Rivers  
Saunders  
Schroer  
Scott  
Shepich  
Shugars  
Varga  
Wallace  
Wetters  
Willard  
Yokich

## Nays—54

Allen  
Alley  
Bandstra  
Banks  
Bender  
Bobier  
Bodem  
Brackenridge  
Bullard  
Crissman  
Cropsey  
Dalman  
DeLange  
Dobb

Dolan  
Fitzgerald  
Galloway  
Gernaat  
Gilmer  
Gnodtke  
Goschka  
Griffin  
Gustafson  
Hammerstrom  
Hill  
Hillemonds  
Horton  
Jamian

Jaye  
Jersevic  
Johnson  
Kaza  
Kukuk  
Llewellyn  
London  
Lowe  
Martin  
McBryde  
McManus  
McNutt  
Middaugh

Middleton  
Munsell  
Nye  
Oxender  
Randall  
Rhead  
Rocca  
Stille  
Voorhees  
Vorva  
Walberg  
Whyman  
Young, R.

## In The Chair: Hertel

The question being on the adoption of the amendment offered previously by Rep. Curtis (see p. 953 of House Journal No. 34),

Rep. Bandstra demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendment offered previously by Rep. Curtis,

The amendment was not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

## Roll Call No. 254

Agee  
Allen  
Anthony  
Baade  
Barns  
Bennane  
Berman  
Brown  
Byrum  
Ciaramitaro  
Cropsey  
Curtis  
DeMars

Dolan  
Freeman  
Gagliardi  
Gire  
Gubow  
Harder  
Harrison  
Hertel  
Hollister  
Hood  
Jersevic  
Jondahl

## Yeas—49

Kilpatrick  
Leland  
Mathieu  
McBryde  
McNutt  
Murphy  
Nye  
Olshove  
O'Neill  
Owen  
Palamara  
Pitoniak

Points  
Rivers  
Saunders  
Schroer  
Scott  
Varga  
Vorva  
Wallace  
Wetters  
Willard  
Yokich  
Young, R.

## Nays—52

Alley  
Bandstra  
Bankes  
Bender  
Bobier  
Bodem  
Brackenridge  
Bullard  
Crissman  
Dalman  
DeLange  
Dobb  
Fitzgerald

Galloway  
Gernaat  
Gilmer  
Gnodtke  
Goschka  
Griffin  
Gustafson  
Hammerstrom  
Hill  
Hillemonds  
Horton  
Jacobetti  
Jamian

Jaye  
Johnson  
Kaza  
Keith  
Kukuk  
Llewellyn  
London  
Lowe  
Martin  
McManus  
Middaugh  
Middleton  
Munsell

Oxender  
Porreca  
Profit  
Randall  
Rhead  
Rocca  
Shepich  
Shugars  
Sikkema  
Stille  
Voorhees  
Walberg  
Whyman

In The Chair: Hertel

The question being on the adoption of the amendments offered previously by Rep. Gubow (see p. 954 of House Journal No. 34),

Rep. Bandstra demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendments offered previously by Rep. Gubow,

The amendments were not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

## Roll Call No. 255

## Yeas—44

Agee  
Allen  
Anthony  
Baade  
Barns  
Bennane  
Berfman  
Brown  
Byrum  
Ciaramitaro  
Cropsey

Curtis  
DeMars  
Freeman  
Gagliardi  
Gire  
Gubow  
Harder  
Harrison  
Hertel  
Hollister  
Hood

Jondahl  
Kilpatrick  
Leland  
Mathieu  
Murphy  
Nye  
Olshove  
O'Neill  
Owen  
Palamara  
Pitoniak

Points  
Profit  
Rivers  
Saunders  
Schroer  
Scott  
Varga  
Wallace  
Willard  
Yokich  
Young, R.

## Nays—57

Alley  
Bandstra  
Bankes  
Bender  
Bobier  
Bodem  
Brackenridge  
Bullard  
Crissman  
Dalman  
DeLange  
Dobb  
Dolan  
Fitzgerald  
Galloway

Gernaat  
Gilmer  
Gnodtke  
Goschka  
Griffin  
Gustafson  
Hammerstrom  
Hill  
Hillemonds  
Horton  
Jacobetti  
Jamian  
Jaye  
Jersevic

Johnson  
Kaza  
Keith  
Kukuk  
Llewellyn  
London  
Lowe  
Martin  
McBryde  
McManus  
McNutt  
Middaugh  
Middleton  
Munsell

Oxender  
Porreca  
Randall  
Rhead  
Rocca  
Shepich  
Shugars  
Sikkema  
Stille  
Voorhees  
Vorva  
Walberg  
Wetters  
Whyman

In The Chair: Hertel

Oxender  
Porreca  
Profit  
Randall  
Rhead  
Rocca  
Shepich  
Shugars  
Sikkema  
Stille  
Voorhees  
Walberg  
Whyman

y by Rep. Gubow (see p. 954 of House

by Rep. Gubow,  
not voting therefor, by yeas and nays, as

Points  
Profit  
Rivers  
Saunders  
Schroer  
Scott  
Varga  
Wallace  
Willard  
Yokich  
Young, R.

Oxender  
Porreca  
Randall  
Rhead  
Rocca  
Shepich  
Shugars  
Sikkema  
Stille  
Voorhees  
Vorva  
Walberg  
Wetters  
Whyman

No. 35

The question being on the adoption of the amendment offered previously by Rep. Gubow (see p. 956 of House Journal No. 34),

Rep. Gubow withdrew the amendment.

The question being on the adoption of the amendment offered previously by Rep. Gubow (see p. 956 of House Journal No. 34),

Rep. Gubow withdrew the amendment.

The question being on the adoption of the amendment offered previously by Rep. Yokich (see p. 959 of House Journal No. 34),

Rep. Yokich withdrew the amendment.

Rep. Wallace moved to amend the bill as follows:

1. Amend page 2, line 7, after "(1)" by inserting "SUBJECT TO SUBSECTION (2)."

2. Amend page 2, line 23, after "EXCEED" by striking out "\$250,000.00" and inserting "\$500,000.00".

3. Amend page 2, line 25, after "APPLY" by striking out "AS DETERMINED BY THE COURT PURSUANT TO SECTION 6304".

4. Amend page 2, line 27, after "EXCEED" by striking out "\$500,000.00" and inserting "\$1,000,000.00".

5. Amend page 3, line 1, by inserting:

"(A) THERE HAS BEEN A DEATH." and relettering the remaining subdivisions.

6. Amend page 3, following line 11, by inserting:

"(D) THERE HAS BEEN AN ALTERATION, DESTRUCTION, OR FALSIFICATION OF A MEDICAL RECORD OR CHART IN VIOLATION OF SECTION 492A OF THE MICHIGAN PENAL CODE, ACT NO. 368 OF THE PUBLIC ACTS OF 1931, BEING SECTION 750.492A OF THE MICHIGAN COMPILED LAWS."

7. Amend page 3, following subsection (D), by inserting:

"(2) IF A DEFENDANT OFFERS TO THE COURT SATISFACTORY EVIDENCE OF COMPLIANCE WITH THE FINANCIAL RESPONSIBILITY REQUIREMENTS OF SECTION 16280 OF THE PUBLIC HEALTH CODE, ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SECTION 333.16280 OF THE MICHIGAN COMPILED LAWS, THE LIMITATION ON DAMAGES FOR NONECONOMIC LOSS SET FORTH IN SUBSECTION (1) ARE REDUCED BY 50%." and renumbering the remaining subsections.

8. Amend page 35, following line 26, by inserting:

"(i) House Bill No. 4404."

The question being on the adoption of the amendments offered by Rep. Wallace,

Rep. Bandstra demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendments offered by Rep. Wallace,

The amendments were not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

#### Roll Call No. 256

Yeas—35

Agee  
Anthony  
Baade  
Barns  
Bennane  
Berman  
Byrum  
Ciaramitaro  
DeMars

Gire  
Gubow  
Harder  
Harrison  
Hertel  
Hollister  
Hood  
Jondahl  
Keith

Kilpatrick  
Leland  
Mathieu  
Murphy  
Nye  
Olshove  
Pitoniak  
Points  
Rivers

Saunders  
Schroer  
Scott  
Varga  
Wallace  
Willard  
Yokich  
Young, R.

Nays—60

Allen  
Alley  
Bandstra  
Banks  
Bender

Fitzgerald  
Galloway  
Gernaat  
Gilmer  
Gnodtke

Jersevic  
Johnson  
Kaza  
Kukuk  
Llewellyn

Oxender  
Palamara  
Porreca  
Profit  
Randall

Bobier	Goschka	London	Rhead
Bodem	Griffin	Lowe	Rocca
Brackenridge	Gustafson	Martin	Shepich
Bullard	Hammerstrom	McBryde	Shugars
Crissman	Hill	McManus	Sikkema
Cropsey	Hillegonds	McNutt	Stille
Dalman	Horton	Middaugh	Vorva
DeLange	Jacobetti	Middleton	Walberg
Dobb	Jamian	Munsell	Wetters
Dolan	Jaye	Owen	Whyman

In The Chair: Hertel

Rep. Wallace moved to amend the bill as follows:

1. Amend page 4, line 25, after "a" by striking out "MAJORITY" and inserting "SUBSTANTIAL PORTION".
2. Amend page 5, line 20, after "A" by striking out "MAJORITY" and inserting "SUBSTANTIAL PORTION".

The question being on the adoption of the amendments offered by Rep. Wallace,

Rep. Wallace demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendments offered by Rep. Wallace,

After debate,

Rep. O'Neill demanded the previous question.

The demand was supported.

The question being, "Shall the main question now be put?"

The previous question was ordered.

The question being on the adoption of the amendments offered by Rep. Wallace,

The amendments were not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

Roll Call No. 257

Yeas—32

Anthony	Gubow	Mathieu	Rivers
Barns	Harrison	Murphy	Saunders
Bennane	Hertel	Nye	Schroer
Berman	Hollister	Olshove	Scott
Byrum	Hood	O'Neill	Varga
Ciaramitaro	Jondahl	Pitoniak	Wallace
DeMars	Kilpatrick	Points	Yokich
Gagliardi	Leland	Profit	Young, R.

Nays—64

Agee	Dobb	Jamian	Oxender
Allen	Dolan	Jaye	Palamara
Alley	Fitzgerald	Jersevic	Porreca
Baade	Freeman	Johnson	Randall
Bandstra	Galloway	Kaza	Rhead
Banks	Gernaat	Kukuk	Rocca
Bender	Gilmer	Llewellyn	Shepich
Bobier	Gnodtke	London	Shugars
Bodem	Goschka	Lowe	Sikkema
Brackenridge	Gustafson	Martin	Stille
Bullard	Hammerstrom	McBryde	Voorhees

Rhead  
Rocca  
Shepich  
Shugars  
Sikkema  
Stille  
Vorva  
Walberg  
Wetters  
Whyman

Crissman  
Cropsey  
Curtis  
Dalman  
DeLange

Harder  
Hill  
Hillegons  
Horton  
Jacobetti

McManus  
McNutt  
Middaugh  
Middleton  
Munsell

Vorva  
Walberg  
Wetters  
Whyman  
Willard

In The Chair: Hertel

Rep. Martin moved that the vote by which the House did adopt the Gubow amendments offered previously be reconsidered (see p. 962 of House Journal No. 34).

The motion did not prevail.

Rep. Rivers moved to amend the bill as follows:

1. Amend page 2, line 23, after "EXCEED" by striking out "\$250,000.00" and inserting "\$375,000.00".
2. Amend page 2, line 27, after "EXCEED" by striking out "\$500,000.00" and inserting "\$750,000.00".

The question being on the adoption of the amendments offered by Rep. Rivers,

Rep. Bandstra demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendments offered by Rep. Rivers,

The amendments were not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

#### Roll Call No. 258

Yeas—34

Agee  
Anthony  
Baade  
Barns  
Bennane  
Berman  
Brown  
Byrum  
Ciaramitaro

DeMars  
Freeman  
Gagliardi  
Gire  
Gubow  
Harrison  
Hertel  
Hollister  
Jondahl

Leland  
Mathieu  
Murphy  
Olshove  
O'Neill  
Oxender  
Pitoniak  
Points

Rivers  
Saunders  
Schroer  
Scott  
Varga  
Wallace  
Willard  
Yokich

Nays—64

Allen  
Alley  
Bandstra  
Bankes  
Bender  
Bobier  
Bodem  
Brackenridge  
Bullard  
Crissman  
Cropsey  
Curtis  
Dalman  
DeLange  
Dobb  
Dolan

Fitzgerald  
Galloway  
Gernaat  
Gilmer  
Gnodtke  
Goschka  
Griffin  
Gustafson  
Hammerstrom  
Harder  
Hill  
Hillegons  
Horton  
Jacobetti  
Jamian  
Jay

Jersevic  
Johnson  
Kaza  
Keith  
Kukuk  
Llewellyn  
London  
Lowe  
Martin  
McBryde  
McManus  
Middaugh  
Middleton  
Munsell  
Nye  
Owen

Palamara  
Porreca  
Profit  
Randall  
Rhead  
Rocca  
Shepich  
Shugars  
Sikkema  
Stille  
Voorhees  
Vorva  
Walberg  
Wetters  
Whyman  
Young, R.

In The Chair: Hertel

erting "SUBSTANTIAL PORTION".  
erting "SUBSTANTIAL PORTION".  
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lace,  
t voting therefor, by yeas and nays, as

Rivers  
Saunders  
Schroer  
Scott  
Varga  
Wallace  
Yokich  
Young, R.

Oxender  
Palamara  
Porreca  
Randall  
Rhead  
Rocca  
Shepich  
Shugars  
Sikkema  
Stille  
Voorhees

Rep. Willard moved to amend the bill as follows:

1. Amend page 34, following line 23, by inserting:

"(9) IN AN ACTION ALLEGING MEDICAL MALPRACTICE, IF THE COURT FINDS THAT A DEFENDANT WAS GROSSLY NEGLIGENT OR COMMITTED AN INTENTIONAL TORT AND ENTERS A JUDGMENT AGAINST THE DEFENDANT, THE COURT SHALL ORDER THE DEFENDANT TO PAY TO THE COURT A SURCHARGE EQUAL TO 1% OF THE DAMAGES ASSESSED AGAINST THE DEFENDANT. THE COURT SHALL TRANSMIT MONEY RECEIVED UNDER THIS SUBSECTION TO THE STATE TREASURER FOR DEPOSIT IN THE MICHIGAN ESSENTIAL HEALTH PROVIDER FUND, WHICH FUND IS HEREBY CREATED. THE DEPARTMENT OF PUBLIC HEALTH SHALL EXPEND THE MONEY IN THE MICHIGAN ESSENTIAL HEALTH PROVIDER FUND ONLY TO SUBSIDIZE PROFESSIONAL LIABILITY INSURANCE PREMIUMS FOR PHYSICIANS WHO PRACTICE IN HEALTH RESOURCE SHORTAGE AREAS UNDER PART 27 OF THE PUBLIC HEALTH CODE, ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SECTIONS 333.2701 TO 333.2727 OF THE MICHIGAN COMPILED LAWS."

The question being on the adoption of the amendment offered by Rep. Willard,

Rep. Bandstra demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendment offered by Rep. Willard,

After debate,

Rep. Palamara demanded the previous question.

The demand was supported.

The question being, "Shall the main question now be put?"

The previous question was ordered.

The question being on the adoption of the amendment offered by Rep. Willard,

The amendment was not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

#### Roll Call No. 259

#### Yeas—42

Agee	Freeman	Mathieu	Rivers
Anthony	Gagliardi	Murphy	Saunders
Baade	Gubow	Olshove	Scott
Barns	Harder	O'Neill	Shepich
Bennane	Harrison	Owen	Varga
Berman	Hertel	Palamara	Wallace
Brown	Hollister	Pitoniak	Wetters
Byrum	Hood	Points	Willard
Cropsey	Jacobetti	Profit	Yokich
Curtis	Jondahl	Rhead	Young, R.
DeMars	Leland		

#### Nays—57

Allen	Galloway	Johnson	Munsell
Alley	Gernaat	Kaza	Nye
Bandstra	Gilmer	Keith	Oxender
Bankes	Gnodtke	Kilpatrick	Porreca
Bender	Goschka	Kukuk	Randall
Bobier	Griffin	Llewellyn	Rocca
Bodem	Gustafson	London	Schroer
Brackenridge	Hammerstrom	Lowe	Shugars
Bullard	Hill	Martin	Sikkema
Crissman	Hillemonds	McBryde	Stille
Dalman	Horton	McManus	Voorhees
DeLange	Jamian	McNutt	Vorva
Dobb	Jaye	Middaugh	Walberg
Dolan	Jersevic	Middleton	Whyman
Fitzgerald			

In The Chair: Hertel

IF THE COURT FINDS THAT A  
 INTENTIONAL TORT AND ENTERS A  
 JUDGMENT AGAINST THE DEFENDANT. THE  
 COURT SHALL ORDER THE STATE TREASURER  
 TO PAY TO THE MICHIGAN  
 SHORTAGE AREAS UNDER PART 27  
 OF 1978, BEING SECTIONS 333.2701

rd,

rd,

rd,

voting therefor, by yeas and nays, as

Rivers  
 Saunders  
 Scott  
 Shepich  
 Varga  
 Wallace  
 Wetters  
 Willard  
 Yokich  
 Young, R.

Munsell  
 Nye  
 Oxender  
 Porreca  
 Randall  
 Rocca  
 Schroer  
 Shugars  
 Sikkema  
 Stille  
 Voorhees  
 Vorva  
 Walberg  
 Whyman

Rep. Saunders moved to amend the bill as follows:

1. Amend page 35, following line 26, by inserting:

"(i) House Bill No. 4405."

The question being on the adoption of the amendment offered by Rep. Saunders,  
 Rep. Martin demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendment offered by Rep. Saunders,

The amendment was not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

## Roll Call No. 260

## Yeas—45

Agee  
 Allen  
 Anthony  
 Baade  
 Barns  
 Bennane  
 Berman  
 Brown  
 Byrum  
 Ciaramitaro  
 Cropsey  
 Curtis

DeMars  
 Freeman  
 Gire  
 Gubow  
 Harder  
 Harrison  
 Hertel  
 Hollister  
 Hood  
 Jondahl  
 Keith

Kilpatrick  
 Leland  
 Mathieu  
 Murphy  
 Olshove  
 O'Neill  
 Owen  
 Palamara  
 Pitoniak  
 Points  
 Porreca

Proffit  
 Rivers  
 Saunders  
 Schroer  
 Scott  
 Varga  
 Wallace  
 Wetters  
 Willard  
 Yokich  
 Young, R.

## Nays—54

Alley  
 Bandstra  
 Bankes  
 Bender  
 Bobier  
 Bodem  
 Brackenhridge  
 Bullard  
 Crissman  
 Dalman  
 DeLange  
 Dobb  
 Dolan  
 Fitzgerald

Galloway  
 Gernaat  
 Gilmer  
 Gnodtke  
 Goschka  
 Griffin  
 Gustafson  
 Hammerstrom  
 Hill  
 Hillegonds  
 Horton  
 Jacobetti  
 Jamian  
 Jaye

Jersevic  
 Johnson  
 Kaza  
 Kukuk  
 Llewellyn  
 London  
 Lowe  
 Martin  
 McBryde  
 McManus  
 McNutt  
 Middaugh  
 Middleton

Munsell  
 Oxender  
 Randall  
 Rhead  
 Rocca  
 Shepich  
 Shugars  
 Sikkema  
 Stille  
 Voorhees  
 Vorva  
 Walberg  
 Whyman

In The Chair: Hertel

The question being on the adoption of the amendment offered previously by Rep. Mathieu (see p. 959 of House Journal No. 34),

Rep. Mathieu withdrew the amendment.

Rep. Saunders moved to amend the bill as follows:

1. Amend page 35, following line 26, by inserting:

"(i) House Bill No. 4404."

The question being on the adoption of the amendment offered by Rep. Saunders,

Rep. Saunders demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendment offered by Rep. Saunders,  
The amendment was not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

## Roll Call No. 261

Yeas—34

Agee	Curtis	Kilpatrick	Points
Anthony	DeMars	Leland	Rivers
Baade	Gubow	Mathieu	Saunders
Barns	Harder	Murphy	Scott
Bennane	Harrison	Olshove	Varga
Berman	Hertel	O'Neill	Wallace
Brown	Hollister	Owen	Wetters
Byrum	Hood	Pitoniak	Young, R.
Ciaramitaro	Jondahl		

Nays—61

Allen	Galloway	Johnson	Porreca
Alley	Gernaat	Kaza	Profit
Bandstra	Gilmer	Keith	Randall
Banks	Gnodtke	Kukuk	Rhead
Bender	Goschka	Llewellyn	Rocca
Bobier	Griffin	London	Schroer
Bodem	Gustafson	Lowe	Shepich
Brackenridge	Hammerstrom	Martin	Shugars
Bullard	Hill	McBryde	Sikkema
Crissman	Hillegonds	McManus	Stille
Cropsey	Horton	McNutt	Voorhees
Dalman	Jacobetti	Middaugh	Vorva
DeLange	Jamian	Munsell	Walberg
Dobb	Jaye	Oxender	Whyman
Dolan	Jersevic	Palamara	Yokich
Fitzgerald			

In The Chair: Hertel

Rep. Gagliardi moved that the bill be placed on the order of Third Reading of Bills.

The motion prevailed, a majority of the members voting therefor.

Rep. Gagliardi moved that the bill be placed on its immediate passage.

The motion prevailed, a majority of the members serving voting therefor.

By unanimous consent the House returned to the order of

Third Reading of Bills

## Senate Bill No. 270, entitled

A bill to amend sections 1483, 2169, 2912a, 2912d, 2912e, 5838a, 5851, 5856, and 6013 of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judicature act of 1961," sections 1483, 2169, 2912d, 2912e, and 5838a as added and section 5851 as amended by Act No. 178 of the Public Acts of 1986 and section 6013 as amended by Act No. 50 of the Public Acts of 1987, being sections 600.1483, 600.2169, 600.2912a, 600.2912d, 600.2912e, 600.5838a, 600.5851, 600.5856, and 600.6013 of the Michigan Compiled Laws; and to add sections 955, 2912b, 2912f, and 2912g.

ders,  
voting therefor, by yeas and nays, as

Points  
Rivers  
Saunders  
Scott  
Varga  
Wallace  
Wetters  
Young, R.

Porreca  
Profit  
Randall  
Rhead  
Rocca  
Schroer  
Shepich  
Shugars  
Sikkema  
Stille  
Voorhees  
Vorva  
Walberg  
Whyman  
Yokich

Bills.

Was read a third time, and the question being on its passage,  
After debate,

Rep. O'Neill demanded the previous question.

The demand was supported.

The question being, "Shall the main question now be put?"

The previous question was ordered.

The question being on the passage of the bill,

The bill was then passed, a majority of the members serving voting therefor, by yeas and nays, as follows:

# Roll Call No. 262

## Yeas—72

Allen  
Alley  
Baade  
Bandstra  
Bankes  
Bender  
Bobier  
Bodem  
Brackenridge  
Bullard  
Byrum  
Crissman  
Cropsey  
Curtis  
Dalman  
DeLange  
DeMars  
Dobb

Dolan  
Fitzgerald  
Gagliardi  
Galloway  
Gernaat  
Gilmer  
Gire  
Gnodtke  
Goschka  
Griffin  
Gustafson  
Hammerstrom  
Harder  
Hill  
Hillemonds  
Horton  
Jacobetti  
Jamian

Jaye  
Jersevic  
Johnson  
Kaza  
Kukuk  
Llewellyn  
London  
Lowe  
Martin  
Mathieu  
McBryde  
McManus  
McNutt  
Middaugh  
Middleton  
Munsell  
Nye  
O'Neill

Owen  
Oxender  
Palamara  
Porreca  
Randall  
Rhead  
Rocca  
Shepich  
Shugars  
Sikkema  
Stille  
Varga  
Voorhees  
Vorva  
Walberg  
Wetters  
Whyman  
Young, R.

## Nays—29

Agee  
Anthony  
Barns  
Bennane  
Berman  
Brown  
Ciaramitaro  
Freeman

Gubow  
Harrison  
Hertel  
Hollister  
Hood  
Jondahl  
Keith

Kilpatrick  
Leland  
Murphy  
Olshove  
Pitoniak  
Points  
Profit

Rivers  
Saunders  
Schroer  
Scott  
Wallace  
Willard  
Yokich

# In The Chair: Hertel

The question being on agreeing to the title of the bill,

Rep. Gagliardi moved to amend the title to read as follows:

A bill to amend sections 1483, 2169, 2912a, 2912d, 2912e, 5838a, 5851, 5856, 6013, and 6304 of Act No. 236 of the Public Acts of 1961, entitled as amended "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with, or contravening any of the provisions of this act," sections 1483, 2169, 2912d, 2912e, 5838a, and 6304 as added and section 5851 as amended by Act No. 178 of the Public Acts of 1986 and section

5, and 6013 of Act No. 236 of the  
ns 1483, 2169, 2912d, 2912e, and  
1986 and section 6013 as amended  
600.2912a, 600.2912d, 600.2912e,  
to add sections 955, 2912b, 2912f,

6013 as amended by Act No. 50 of the Public Acts of 1987, being sections 600.1483, 600.2169, 600.2912a, 600.2912d, 600.2912e, 600.5838a, 600.5851, 600.5856, 600.6013, and 600.6304 of the Michigan Compiled Laws; to add sections 2912b, 2912f, 2912g, and 2912h; and to repeal certain parts of the act.

The motion prevailed.

The title as amended was then agreed to.

Rep. Ciaramitaro, having reserved the right to enter his protest against the passage of the bill, made the following statement:

"Mr. Speaker and members of the House:

When we looked at the results in workers' comp in the 1980's, benefit reduction packages provided only about 6% relief to the business community. Insurance reforms resulted in cost reductions of approximately 30% within the first two years.

These findings were corroborated in many studies. They have been repeatedly shown to continue in effect even today by annual reports on the state of competition in the workers' compensation industry by the Michigan Insurance Commission. They have been accepted as accurate by most business and labor organizations including the Michigan State Chamber of Commerce.

In today's med mal debate you are faced with an effort to again blame the victims. Yet the proposed 'reforms' led by many of the same forces who brought you the 1980 workers' comp benefit reductions, still contain no insurance reforms. As such, it is a package which will only serve to raise insurance company profits, while doing serious harm to the legitimate victims of malpractice.

Those who refuse to learn from history are doomed to repeat it!"

Rep. Saunders, having reserved the right to enter his protest against the passage of the bill, made the following statement:

"Mr. Speaker and members of the House:

SB 270 (H-2), carefully crafted by the only medical liability companies operating in the state of Michigan, is the most vicious attack on consumers by this legislative body since the passage of the auto no-fault reform bill that had been rejected by voters only weeks before the legislative vote.

Once again, in pursuit of the easy way out, we have blamed the victims of the malpractice, placing unnecessary hurdles in their path to legal redress and, once there, severely limiting the court's ability to provide relief.

Passage of this legislation will not only further insulate health care professionals and institutions from responsibility for their negligent conduct, but allow the malpractice insurers to earn even more shocking profits.

Once again, the consumers of this state are losing the basic protections of the tort system in order to guarantee that medical malpractice insurers get fat.

For these reasons, I voted 'no' on SB 270 (H-2)."

Rep. Freeman, having reserved the right to enter his protest against the passage of the bill, made the following statement:

"Mr. Speaker and members of the House:

I voted 'no' on SB 270 (H-2) because the bill does not properly balance the need to protect the legal rights of victims of malpractice with addressing the root causes of what drives up the cost of malpractice insurance.

I believe that there is a problem with malpractice insurance being very high in Michigan as compared to other parts of the country. I also believe that either the real or perceived concerns of a doctor being sued can cause doctors to practice defensive medicine, which may be a factor in driving up the high cost of medical care. What is unclear to me, is whether the problem of malpractice is so bad, that we need to tort reforms to the degree that it will undercut a legitimate malpractice victim's ability to bring suit and be properly compensated for their injuries. Because I do not have enough specific data that indicates that by enacting major tort reforms that malpractice premiums will be reduced, I cannot vote for SB 270 (H-2).

Moreover, I cannot vote for this bill, because it lowers the statute of limitations for children. Currently the statute of limitations is tolled until a child reaches age 13, and then a case must be brought by the time the child reaches age 15. SB 270 (H-2) will lower the tolling of the statute of limitations until a child is 8 years old, and then a suit must be filed by the time the child is 10. I believe very strongly that children fall into a unique category of individuals that must be especially protected from malpractice. I therefore cannot vote for this bill which would reduce the protections that current law provides for children."

500.1483, 600.2169, 600.2912a, 600.2912d,  
Michigan Compiled Laws; to add sections

he passage of the bill, made the following

duction packages provided only about 6%  
ions of approximately 30% within the first

edly shown to continue in effect even today  
tion industry by the Michigan Insurance  
abor organizations including the Michigan

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nefit reductions, still contain no insurance  
ompany profits, while doing serious harm

passage of the bill, made the following

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more shocking profits.

the tort system in order to guarantee that

passage of the bill, made the following

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malpractice insurance.

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tations for children. Currently the statute  
rought by the time the child reaches age  
ild is 8 years old, and then a suit must be  
to a unique category of individuals that  
s bill which would reduce the protections

No. 35] the

Rep. Pitoniak, having reserved the right to enter his protest against the passage of the bill, made the following statement:

"Mr. Speaker and members of the House:

I voted 'no' on SB 270 (H-2) because it is not a fair and balanced bill for consumers. I do believe that we need to adopt some legislative reforms to reduce the costs of medical malpractice insurance in Michigan, but that consumers of medical services should not bear the full burden of these reforms. I believe the bill developed by Representatives Nye and Mathieu (H-1) was the fairest proposal before us at this time.

Senate Bill 270 (H-2) did nothing to assure actual premium reductions for health care providers, to hold medical professionals accountable for their negligent conduct, or to guarantee that medical professionals have financial responsibility.

I fear that the passage of SB 270 (H-2) will enrich insurers, provide little financial relief to health care providers, and will protect negligent doctors from appropriate recourse by victimized consumers."

Rep. Profit, having reserved the right to enter his protest against the passage of the bill, made the following statement:

"Mr. Speaker and members of the House:

I voted 'no' on SB 270 for the following reasons:

It is obvious from the debate that some members of the medical community are confused as to whether they want to earn a living as health care providers, or insurers.

This legislation provides for more money going to the insurance interests at the expense of everyone else—physicians, patients, taxpayers, and victims of medical malpractice themselves.

I am very supportive of health care reform and sympathetic to the difficulties faced by physicians and persons in need of health care, due to the current medical malpractice insurance mess. This legislation does nothing to positively address these concerns, however.

It is unfortunate that the physicians in this state are being so manipulated by the insurance interests!"

By unanimous consent the House returned to the order of

#### Motions and Resolutions

Reps. Johnson, Gire, Hollister, Berman, Horton, Olshove, Freeman, Banks, Bender, Bodem, Clack, Crissman, DeMars, Dobb, Dolan, Fitzgerald, Galloway, Gernaat, Gilmer, Goschka, Hillegonds, Jacobetti, Jamian, Kaza, Leland, London, McBryde, McManus, Middleton, Palamara, Pitoniak, Points, Porreca, Profit, Scott, Varga, Whyman and Yokich offered the following concurrent resolution:

#### House Concurrent Resolution No. 180.

A concurrent resolution of tribute to Meri K. Pohutsky.

Whereas, It is indeed a privilege to honor Meri K. Pohutsky as she assumes her new role as chairperson of the board of directors for the National Network of Runaway and Youth Services. Her election to this demanding position is the result of her staunch dedication and determination to aid runaway and homeless youth through the Michigan Network and her effectiveness as executive director of the Sanctuary, Inc. This agency is responsible for providing the only shelter available to runaway and homeless youth in Oakland County since 1974; and

Whereas, Meri Pohutsky has channeled immeasurable energy towards helping youth at risk in Royal Oak and elsewhere through leadership roles with several crucial organizations, including the Child Abuse and Neglect Council of Oakland County and the Michigan Network of Runaway, Homeless and Youth Services. With a master's degree in guidance and counseling and three young children of her own, Meri is deeply committed and well prepared to reach out to children in high-risk situations; and

Whereas, The mission of the National Network of Runaway and Youth Services is to challenge the nation to provide positive alternatives to youth with nowhere to turn, as well as to their families. By providing advocacy, public education, training, and technical assistance to those in need, the network hopes to accomplish this difficult mission. Now representing over 900 agencies dedicated to youth assistance, the network has become quite formidable and has already made a noticeable impact; and

Whereas, As Ms. Pohutsky begins yet another challenge, we are confident she will display the same dedication and brilliant leadership which have always been characteristic of her work; now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That highest tribute be accorded to Meri K. Pohutsky; and be it further

Resolved, That a copy of this resolution be transmitted to Meri as evidence of our best wishes.

Pending the reference of the concurrent resolution to a committee,

Rep. Olshove moved that the rules be suspended and the concurrent resolution be considered at this time.

The motion prevailed, three-fifths of the members present voting therefor.

The question being on the adoption of the concurrent resolution,

The concurrent resolution was adopted.

Dobb, Dolan, Freeman, Gire, Harder, Harrison, Hill, Murphy, Palamara, Pitoniak, Points, Porreca, Profit, ch offered the following resolution:

Leadership Institute, Inc., in Flint. The Youth Leadership Institute and a sense of civic responsibility in the African- committed men and women to foster pride and ate is a highly structured eight-week program of mmunity groups, businesses, organizations, and a individual lives and in the future of Flint and all

lly in grades ten through twelve. Most importantly, ur entire citizenry. We are proud to salute them: IOOL

# H SCHOOL

ristine Jenkins  
ashonda Mason  
OOL  
amian Caldwell  
urtis Gilliam  
ilnita Hines  
ed Jackson  
rey Mosley

# ADEMY

Annie Brown  
Anzio Dickerson  
Curtis Lawson  
Donte Shuman  
Lauren Wells  
Kenya Williams

OL  
inia Hamilton  
IOOL

L  
us Summers  
rick Williams  
E  
el Lynch

L  
OOL

rlynn Heller

ded to salute the 1993 graduates of the  
ople as evidence of our respect.

Pending the reference of the resolution to a committee,  
Rep. Olshove moved that the rules be suspended and the resolution be considered at this time.  
The motion prevailed, three-fifths of the members present voting therefor.  
The question being on the adoption of the resolution,  
The resolution was adopted.

Reps. McNutt, Agee, Anthony, Baade, Banks, Barns, Bender, Bodem, Bullard, Byrum, Clack, Crissman, Dalman, DeMars, Dobb, Dolan, Fitzgerald, Freeman, Galloway, Gernaat, Gilmer, Gire, Gnodtke, Goschka, Hammerstrom, Harrison, Hillemonds, Hollister, Horton, Jacobetti, Jamian, Jersevic, Kaza, Kilpatrick, Kukuk, Leland, Lowe, McBryde, Midaugh, Middleton, Munsell, Palamara, Pitoniak, Points, Porreca, Profit, Randall, Rhead, Rivers, Rocca, Schroer, Scott, Shugars, Stille, Varga, Vorva, Wallace, Whyman and Yokich offered the following resolution:  
House Resolution No. 168.

A resolution to commemorate Police Memorial Day in Michigan.  
Whereas, The people of Michigan are proud to recognize Saturday, May 15, 1993, as Michigan's Police Memorial Day; This event coincides with National Police Memorial Day, a national day of remembrance for law enforcement originally proclaimed by President John F. Kennedy shortly before his death in Dallas in 1963; and  
Whereas, This will mark the first statewide observance of Police Memorial Day in Michigan. Law enforcement officers across the state will observe this day by wearing a small black band on their badge to remember and honor their fallen fellow officers. In Midland, a ceremony of appreciation will be held, followed by a squad car procession from Midland to Bay City for a second ceremony honoring the Bay County officers killed in the line of duty with a 21-gun salute; and  
Whereas, Law enforcement duties require great sacrifice on the part of law enforcement officers and their families. Those duties often present great personal risk to their lives. Law enforcement officers serve the public every hour of every day of the year. They have been selected, trained, and entrusted as the peacekeepers of our country; and  
Whereas, During 1992, 116 police officers were killed across America in the line of duty. A law enforcement life was lost every seventy-five hours. The 556,205 men and women currently serving America as sworn law enforcement officers follow in the proud traditions for which men and women have sacrificed their lives for over 200 years; now,  
Therefore, be it

Resolved by the House of Representatives, That we hereby commemorate May 15, 1993, as Police Memorial Day in Michigan. We call upon all citizens to pause and remember the brave men and women who have made the ultimate sacrifice in the name of law enforcement and those who so bravely choose this way of life to protect our future; and  
be it further  
Resolved, That a copy of this resolution be transmitted to coordinators of this observance as evidence of our deep respect.  
Pending the reference of the resolution to a committee,  
Rep. Olshove moved that the rules be suspended and the resolution be considered at this time.  
The motion prevailed, three-fifths of the members present voting therefor.  
The question being on the adoption of the resolution,  
The resolution was adopted.

## Notices

hereby give notice that on the next legislative session day I will move that the vote by which the House passed Senate Bill No. 270 be reconsidered.

Rep. Bandstra

By unanimous consent the House returned to the order of

## Motions and Resolutions

Reps. Cropsey, DeMars, Willard, Lowe, Voorhees, Bullard and Martin offered the following concurrent resolution:  
House Concurrent Resolution No. 185.  
A concurrent resolution requesting the Michigan Attorney General to file suit in the United States Supreme Court against the United States government, specified U.S. government departments and agencies, and the official representatives of certain other countries alleging violations of the civil rights of Prisoners of War or Missing in Action

## Roll Call No. 282

## Yeas—29

Barns  
Bennane  
Berman  
Bobier  
Brown  
Clack  
Dobronski  
Emerson

Freeman  
Gire  
Gubow  
Harrison  
Hertel  
Hollister  
Hood

Jondahl  
Kilpatrick  
Murphy  
Olshove  
O'Neill  
Points  
Profit

Rivers  
Saunders  
Scott  
Stallworth  
Wallace  
Yokich  
Young, R.

## Nays—76

Agee  
Alley  
Anthony  
Baade  
Bandstra  
Bankes  
Bender  
Bodem  
Brackenridge  
Bryant  
Bullard  
Byrum  
Ciaramitaro  
Crissman  
Cropsey  
Curtis  
Dalman  
DeLange  
DeMarq

Dobb  
Dolan  
Fitzgerald  
Gagliardi  
Galloway  
Gernaat  
Gilmer  
Gnodtke  
Goschka  
Griffin  
Gustafson  
Hammerstrom  
Harder  
Hill  
Hillemonds  
Horton  
Jacobetti  
Jamian  
Jaye

Jersevic  
Johnson  
Kaza  
Keith  
Kukuk  
Leland  
Llewellyn  
London  
Lowe  
Martin  
Mathieu  
McBryde  
McManus  
McNutt  
Middaugh  
Middleton  
Munsell  
Nye  
Oxender

Palamara  
Pitoniak  
Porreca  
Randall  
Rhead  
Rocca  
Schroer  
Shepich  
Shugars  
Sikkema  
Stille  
Voorhees  
Vorva  
Walberg  
Weeks  
Wetters  
Whyman  
Willard  
Young, J., Jr.

In The Chair: Hillemonds

Rep. Horton moved to amend the bill as follows:

1. Amend page 11, line 10, after "airport," by inserting "shooting ranges."

The motion prevailed and the amendment was adopted, a majority of the members serving voting therefor.

Rep. Clack moved that the bill be placed on the order of Third Reading of Bills.

The motion prevailed, a majority of the members voting therefor.

By unanimous consent the House returned to the order of  
Third Reading of Bills

## Senate Bill No. 270, entitled

A bill to amend sections 1483, 2169, 2912a, 2912d, 2912e, 5838a, 5851, 5856, and 6013 of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judicature act of 1961," sections 1483, 2169, 2912d, 2912e, and 5838a as added and section 5851 as amended by Act No. 178 of the Public Acts of 1986 and section 6013 as amended by Act No. 50 of the Public Acts of 1987, being sections 600.1483, 600.2169, 600.2912a, 600.2912d, 600.2912e, 600.5838a, 600.5851, 600.5856, and 600.6013 of the Michigan Compiled Laws; and to add sections 955, 2912b, 2912f, and 2912g.

(The bill was passed and notice given by Rep. Bandstra of intent to reconsider the vote by which the House did pass the bill on April 28, see p. 1012 and 1023 of House Journal No. 35; immediate effect did not prevail, motion made to reconsider the passage of the bill and postponed for the day on April 29, see p. 1041 and 1044 of House Journal No. 36.)

The question being on the motion made previously by Rep. Bandstra,  
Rep. Bandstra withdrew the motion.

Rivers  
Saunders  
Scott  
Stallworth  
Wallace  
Yokich  
Young, R.

Palamara  
Pitoniak  
Porreca  
Randall  
Rhead  
Rocca  
Schroer  
Shepich  
Shugars  
Sikkema  
Stille  
Voorhees  
Vorva  
Walberg  
Weeks  
Wetters  
Whyman  
Willard  
Young, J., Jr.

Members serving voting therefor.  
Bills.

5856, and 6013 of Act No. 236 of the  
sections 1483, 2169, 2912d, 2912e, and  
s of 1986 and section 6013 as amended  
59, 600.2912a, 600.2912d, 600.2912e,  
and to add sections 955, 2912b, 2912f,

the vote by which the House did pass.  
effect did not prevail, motion made to  
p. 1041 and 1044 of House Journal

Rep. Bandstra moved that the bill be given immediate effect.  
The question being on the motion by Rep. Bandstra,  
Rep. Bandstra demanded the yeas and nays.  
The demand was supported.  
The question being on the motion by Rep. Bandstra,  
The motion did not prevail, two-thirds of the members serving not voting therefor, by yeas and nays, as follows:

## Roll Call No. 283

Yeas—64

Alley	Gagliardi	Jaye	O'Neill
Bandstra	Galloway	Johnson	Owen
Banks	Gernaat	Kaza	Oxender
Bender	Gilmer	Keith	Palamara
Bobier	Gire	Kukuk	Porreca
Bodem	Gnodtke	Llewellyn	Randall
Brackenridge	Goschka	London	Rhead
Bryant	Griffin	Lowe	Rocca
Bullard	Gustafson	Martin	Shepich
Crissman	Hammerstrom	McBryde	Shugars
Cropsey	Hertel	McManus	Sikkema
Dalman	Hill	McNutt	Stille
DeLange	Hillegonds	Middaugh	Voorhees
Dobb	Horton	Middleton	Vorva
Dolan	Jacobetti	Munsell	Walberg
Fitzgerald	Jamian	Nye	Whyman

Nays—39

Agep	Curtis	Kilpatrick	Schroer
Anthony	Dobronski	Leland	Scott
Baade	Freeman	Mathieu	Stallworth
Barns	Gubow	Murphy	Varga
Bennane	Harder	Olshove	Wallace
Berman	Harrison	Pitoniak	Wetters
Brown	Hollister	Points	Willard
Byrum	Hood	Profit	Yokich
Ciaramitaro	Jersevic	Rivers	Young, J., Jr.
Clack	Jondahl	Saunders	

In The Chair: Hillegonds

By unanimous consent the House returned to the order of  
Messages from the Senate

The Speaker laid before the House  
House Bill No. 4113, entitled

A bill to amend section 33 of Act No. 303 of the Public Acts of 1967, entitled as amended "Marine safety act," as amended by Act No. 59 of the Public Acts of 1990, being section 281.1033 of the Michigan Compiled Laws.  
(The bill was received from the Senate on April 29 with amendment, title amendment and immediate effect given by the Senate, consideration of which, under the rules, was postponed until today.)  
(For amendment, see p. 1065 of House Journal No. 36.)

The question being on concurring in the adoption of the amendment made to the bill by the Senate,  
The amendment was concurred in, a majority of the members serving voting therefor, by yeas and nays, as follows:

Wallace  
Wetters  
Willard  
Yokich  
Young, R.

Berman  
Bohner  
Bodden  
Brackley  
Brown  
Byrum  
Clark  
Crisman  
Crossey  
Curtis  
Dalman  
DeLange  
DeMars

Gilmer  
Gnodtke  
Goschka  
Griffin  
Gustafson  
Hammerstrom  
Harder  
Harrison  
Hertel  
Hill  
Hillemonds  
Hollister  
Hood  
Horton

Leland  
Llewellyn  
London  
Lowe  
Martin  
Mathieu  
McBryde  
McManus  
McNutt  
Middaugh  
Munsell  
Murphy  
Nye  
O'Neill

Rocca  
Saunders  
Scott  
Shepich  
Shugars  
Sikkema  
Stallworth  
Stille  
Varga  
Voorhees  
Vorva  
Walberg  
Wallace  
Wetters

Nays—9

to the Governor.

Barns  
Caramitaro  
Gire

Gubow  
Olshove

Rivers  
Schroer

Willard  
Yokich

In The Chair: Hertel

els of state owned property in Macomb  
to provide for the disposition of the  
proposed substitute (H-2) previously  
herefor.  
Bills.

The House agreed to the title of the bill.  
Rep. Gagliardi moved that the bill be given immediate effect.  
The motion prevailed, two-thirds of the members serving voting therefor.

By unanimous consent the House returned to the order of  
Messages from the Senate

The Senate re-transmitted  
Senate Bill No. 270, entitled

A bill to amend sections 1483, 2169, 2912a, 2912d, 2912e, 5838a, 5851, 5856, and 6013 of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judicature act of 1961," sections 1483, 2169, 2912d, 2912e, and 5838a as added and section 5851 as amended by Act No. 178 of the Public Acts of 1986 and section 6013 as amended by Act No. 50 of the Public Acts of 1987, being sections 600.1483, 600.2169, 600.2912a, 600.2912d, 600.2912e, 600.5838a, 600.5851, 600.5856, and 600.6013 of the Michigan Compiled Laws; and to add sections 955, 2912b, 2912f, and 2912g.

The following is the Senate amendment made to the House substitute (H-2):

Amend page 24, line 15, after "PROCREATE," by striking out the balance of the subdivision.

The Senate concurred in the House substitute (H-2) as thus amended and ordered that it be given immediate effect.

The Speaker announced that under Rule 51 the bill would lie over one day.

Rep. Gagliardi moved that Rule 51 be suspended.

The motion prevailed, three-fifths of the members present voting therefor.

The question being on concurring in the adoption of the amendment to the House substitute (H-2) made to the bill by the Senate,

The amendment was concurred in, a majority of the members serving voting therefor, by yeas and nays, as follows:

of state owned property in Macomb  
provide for the disposition of the  
efor, by yeas and nays, as follows:

Owen  
Oxender  
Palamara  
Pitoniak  
Points  
Porreca  
Profit  
Randall  
Rhead

Roll Call No. 586

Yeas—103

Anthony  
Barns  
Berman  
Bohner  
Bodden  
Brackley  
Brown  
Byrum  
Clark  
Crisman  
Crossey  
Curtis  
Dalman  
DeLange  
DeMars

Dobb  
Dobronski  
Dolan  
Emerson

Jamian  
Jaye  
Jersevic  
Johnson

Pitoniak  
Points  
Porreca  
Profit

Baade	Fitzgerald	Kaza	Randall
Bandstra	Freeman	Keith	Rhead
Banks	Gagliardi	Kilpatrick	Rivers
Barns	Galloway	Kukuk	Rocca
Bender	Gernaat	Leland	Saunders
Bennane	Gilmer	Llewellyn	Schroer
Berman	Gire	London	Scott
Bobier	Gnodtke	Lowe	Shepich
Bodem	Goschka	Martin	Shugars
Brackenridge	Griffin	Mathieu	Sikkema
Brown	Gubow	McBryde	Stallworth
Bryant	Gustafson	McManus	Stille
Bullard	Hammerstrom	McNutt	Varga
Byrum	Harder	Middaugh	Voorhees
Ciaramitaro	Harrison	Munsell	Vorva
Clack	Hertel	Murphy	Walberg
Crissman	Hill	Nye	Wallace
Cropsey	Hillegonds	Olshove	Wetters
Curtis	Hollister	O'Neill	Willard
Dalman	Hood	Owen	Yokich
DeLange	Horton	Oxender	Young, R.
DeMars	Jacobetti	Palamara	

Nays—0

In The Chair: Hertel

Rep. Gagliardi moved that the bill be given immediate effect.

The question being on the motion by Rep. Gagliardi,

Rep. Gubow demanded the yeas and nays.

The demand was supported.

The question being on the motion by Rep. Gagliardi,

The motion did not prevail, two-thirds of the members serving not voting therefor, by yeas and nays, as follows:

Roll Call/No. 587

Yeas—60

Allen	Dolan	Jacobetti	Munsell
Alley	Fitzgerald	Jamian	Nye
Bandstra	Gagliardi	Jaye	Oxender
Banks	Galloway	Johnson	Palamara
Bender	Gernaat	Kaza	Porreca
Bobier	Gilmer	Keith	Randall
Bodem	Gnodtke	Kukuk	Rhead
Brackenridge	Goschka	Llewellyn	Rocca
Bryant	Griffin	London	Shepich
Bullard	Gustafson	Lowe	Shugars
Crissman	Hammerstrom	Martin	Sikkema
Cropsey	Hertel	McBryde	Stille
Dalman	Hill	McManus	Voorhees
DeLange	Hillegonds	McNutt	Vorva
Dobb	Horton	Middaugh	Walberg

Nays—40

Agee	Curtis	Kilpatrick	Saunders
Anthony	Dobronski	Leland	Schroer

Randall  
Rhead  
Rivers  
Rocca  
Saunders  
Schroer  
Scott  
Shepich  
Shugars  
Sikkema  
Stallworth  
Stille  
Varga  
Voorhees  
Vorva  
Walberg  
Wallace  
Wetters  
Willard  
Yokich  
Young, R.

Baade  
Barnes  
Bennett  
Berman  
Brown  
Byrum  
Caramitaro  
Clack

In The Chair: Hertel

Emerson  
Freeman  
Gubow  
Harder  
Harrison  
Hollister  
Hood  
Jersevic

Mathieu  
Murphy  
Olshove  
O'Neill  
Pitoniak  
Points  
Profit  
Rivers

Scott  
Stallworth  
Varga  
Wallace  
Wetters  
Willard  
Yokich  
Young, R.

Rep. Rivers moved that Rep. Agee be granted a temporary leave of absence from today's session.  
The motion prevailed.

By unanimous consent the House returned to the order of  
Third Reading of Bills

Rep. Gagliardi moved that Senate Bill No. 608 be placed on its immediate passage.  
The motion prevailed, a majority of the members serving voting therefor.

Senate Bill No. 608, entitled

A bill to amend Act No. 281 of the Public Acts of 1967, entitled "Income tax act of 1967," as amended, being sections 206.1 to 206.532 of the Michigan Compiled Laws, by adding section 483a; and to repeal certain parts of the act on a specific date.

Was read a third time and passed, a majority of the members serving voting therefor, by yeas and nays, as follows:

Roll Call No. 588

Yeas—55

for, by yeas and nays, as follows:

Munsell  
Nye  
Oxender  
Palamara  
Porreca  
Randall  
Rhead  
Rocca  
Shepich  
Shugars  
Sikkema  
Stille  
Voorhees  
Vorva  
Walberg

Alley  
Bandstra  
Bennett  
Brackenridge  
Brown  
Bryant  
Bullard  
Clack  
Dalman  
DeMars  
Dobb  
Dobronski  
Dolan  
Fitzgerald

Freeman  
Gagliardi  
Galloway  
Gernaat  
Gilmer  
Gnodtke  
Griffin  
Gubow  
Gustafson  
Hammerstrom  
Hertel  
Hill  
Hillemonds  
Hood

Jacobetti  
Jamian  
Johnson  
Keith  
Kukuk  
Leland  
London  
Martin  
McBryde  
McNutt  
Munsell  
O'Neill  
Oxender  
Palamara

Pitoniak  
Points  
Porreca  
Profit  
Saunders  
Scott  
Shepich  
Shugars  
Stallworth  
Varga  
Vorva  
Wallace  
Young, R.

Nays—46

Saunders  
Schroer

Allen  
Anthony  
Baade  
Banks  
Barnes  
Bender  
Berman

Cropsey  
Curtis  
DeLange  
Gire  
Goschka  
Harder  
Harrison

Kilpatrick  
Llewellyn  
Lowe  
Mathieu  
McManus  
Middaugh  
Murphy

Rhead  
Rivers  
Rocca  
Schroer  
Sikkema  
Stille  
Voorhees

# **EXHIBIT E**



**House  
Legislative  
Analysis  
Section**

Olds Plaza Building, 10th Floor  
Lansing, Michigan 48909  
Phone: 517/373-6466

# MASTER FILE

## ***THE APPARENT PROBLEM:***

In 1986, the legislature enacted a series of reforms aimed at growing concerns about the effect of the medical liability system on the availability and affordability of health care in Michigan. Reforms that specifically addressed medical liability included limiting awards for noneconomic loss (that is, pain and suffering) to \$225,000 (with exceptions), specifying qualifications for expert witnesses, constricting the statute of limitations for bringing a medical malpractice lawsuit, providing for the dismissal of a defendant upon an affidavit of noninvolvement, requiring mediation, and requiring each party either to provide security for costs or to file an affidavit of meritorious claim or defense.

Opinion is widespread in the medical community and elsewhere that these reforms have proved inadequate. Providers of medical care and malpractice insurance cite numerous statistics to support their case. For both doctors and hospitals, medical malpractice insurance costs much more in Michigan than elsewhere; Detroit area hospitals pay the highest liability rates in the country, and even smaller, outstate hospitals pay more than some urban hospitals elsewhere. The average liability cost per bed is \$1,400 nationally, \$4,600 for the state as a whole, and \$6,900 in Detroit, while the \$2,800 per bed average for rural Michigan is higher than figures cited for Chicago and Cleveland. A 1990 report of the U.S. Government Accounting Office

## **MEDICAL MALPRACTICE LIABILITY**

Senate Bill 270 (Substitute H-1)  
Sponsor: Senator Dan L. DeGrow

House Bill 4033 (Substitute H-3)  
Sponsor: Rep. David M. Gubow

House Bill 4403 (Substitute H-1)  
Sponsor: Rep. Lynn Owen

House Bill 4404 (Substitute H-1)  
Sponsor: Rep. Lynn Owen

Second Analysis (4-20-93)  
Senate Committee (SB 270): Judiciary  
House Committee (HB 4033): Mental  
Health  
House Committee (other bills): Judiciary

(GAO) confirms that while rates declined in the nation and adjacent states since about 1988, Michigan rates have continued to increase, although at a slower rate since 1986.

Reports are that only 37 cents of each dollar spent on medical liability premiums goes to victims of malpractice, while roughly half of the money paid in premiums goes to legal fees (plaintiff and defense combined) and court costs. Payouts per claim are increasing; one hospital insurer reports a 173 percent increase—from \$51,000 to \$139,000—in its average payout per claim between 1986 and 1990. Lawsuits, too, are on the rise, threatening to widen the gap between Michigan and other states; nationally, about a half-dozen lawsuits are filed annually for every 100 physicians, but the figure for Michigan is closer to 20 lawsuits per 100 physicians.

Using survey results and anecdotal evidence, critics of the current system maintain that litigiousness and the high cost of insurance in Michigan drive out physicians, either literally out of the state, or out of practice through early retirement. Many other physicians choose to remain in practice, but eliminate costly elements such as obstetrics that carry a comparatively high risk for lawsuits (for example, obstetrical coverage in Detroit costs \$134,000 annually for \$1 million per occurrence/\$3 million aggregate coverage; for \$100,000/\$300,000

Senate Bill 270, House Bills 4033, 4403 and 4404 (4-20-93)

coverage, the annual cost is \$63,000). The medical liability climate thus is held at least partly responsible for problems that people in urban centers and rural areas have in obtaining medical care, and responsible for increasing health care costs by forcing physicians to practice "defensive medicine."

One thing that carries the potential to reduce the time and expense of malpractice lawsuits is the use of binding arbitration. However, existing arbitration provisions, which date to 1975, are little used; lack of participation has been attributed to patients' distrust of the current makeup of arbitration panels (which must have a physician as one of the three members), physician reluctance to serve on panels, the unwieldy process, and a lack of incentives to participate.

To alleviate problems with the state's medical liability system and address widespread dissatisfaction with it, further reforms have been proposed.

### ***THE CONTENT OF THE BILLS:***

Senate Bill 270 would amend the Revised Judicature Act (MCL 600.1483 et al.) to do the following with regard to medical malpractice actions: revise limits on noneconomic damages and link them to compliance with proposed financial responsibility requirements, limit attorneys' contingency fees, require expert witnesses to be of the same board-certified specialty or health profession as the defendant, bar a plaintiff from receiving payment for the loss of an opportunity to survive, require a plaintiff to notify a defendant 182 days before filing a suit, provide for the waiver of the physician-patient privilege when a malpractice suit is commenced, enact new provisions on voluntary binding arbitration, generally constrict the statute of limitations on suing for injuries done to minors, and eliminate the tolling (suspension) of the statute of limitations when a foreign object was left in the body.

The bill is tie-barred to House Bills 4033, 4403, 4404, and the "physician discipline" package (House Bills 4076, 4295, and companion bills). Generally speaking, provisions that are procedural in nature (such as those dealing with expert witnesses, arbitration, and the 182-day notice requirement) would apply to cases filed on or after October 1, 1993, while substantive provisions (such as those

dealing with noneconomic loss limits and statutes of limitations) would apply to causes of action arising on or after October 1, 1993.

A more detailed explanation follows.

Noneconomic losses. The bill would replace the current \$225,000 limit on noneconomic losses (which statutory adjustments for inflation have increased to a reported \$280,000) and the exceptions to it with a two-tier limit. Generally, payment for noneconomic losses could not exceed \$500,000. However, the limit would be \$1 million if there had been a death, if there were a permanent disability due to an injury to the brain or spinal cord, if damage to a reproductive organ left a person unable to procreate, or if a medical record had been illegally destroyed or falsified. The award caps would be halved for a defendant who was in compliance with the financial responsibility requirements proposed by House Bill 4404. Caps would be annually adjusted for inflation.

Contingency fees. An attorney's contingency fee would be limited to 15 percent of the amount recovered if the claim was settled before mediation or arbitration, 25 percent if settled after mediation or arbitration but before trial, and 33-1/3 percent if the claim went to trial. (Court rules limit contingency fees to 33-1/3 percent.) The bill would prescribe the manner of computing the fee, require a contingency fee agreement to be in writing, and require an attorney to make certain disclosures regarding fees. An attorney whose contingency fee agreement provided for a contingency fee in excess of that allowed could not collect more than what would be received under his or her usual hourly rate of compensation, up to the amount provided by the applicable contingency fee limit.

Expert witnesses. At present, if the defendant physician or dentist is a specialist, an expert witness must be of the same or related specialty and at the time devoting a substantial portion of his or her professional time to either active clinical practice or medical or dental school instruction. Under the bill, each expert witness (not just those in cases involving specialists) would have to have spent a substantial portion of the preceding year in active clinical practice in the same health profession as the defendant or in the instruction of students. If a defendant was board-certified, the witness would have to be, and if the defendant was a general

practitioner, the witness would have to either be a general practitioner or instructing students.

Neither the tax returns nor the personal diary or calendar of an expert witness could be sought or used by counsel to determine whether an expert witness was qualified, and counsel would be forbidden from interviewing the witness's family members concerning the amount of time the witness spent engaged in his or her health profession.

Lost opportunity to survive. A plaintiff would be barred from recovering for a lost opportunity to survive. (This would override the 1990 decision of the Michigan Supreme Court in Falcon v. Memorial Hospital, 436 Mich. 443. In that case, the court held that in medical malpractice actions, loss of an opportunity to survive is compensable in proportion to the extent of the lost opportunity, even though the opportunity was less than fifty percent and it was not probable that an unfavorable result would or could have been avoided. Under this decision, the plaintiff must establish that the defendant more probably than not reduced the opportunity of avoiding harm.)

Advance notice of suit. For the stated purposes of promoting settlement without the need for formal litigation, reducing the cost of medical malpractice litigation, and providing compensation for meritorious medical malpractice claims that would otherwise be precluded from recovery because of litigation costs, the bill would require a plaintiff planning to file suit to notify a defendant at least 182 days before commencing court action. The notice could be filed later if a statute of limitations was about to apply. Meeting the 182-day requirement for one defendant would cover meeting it for any future defendants added to the suit. The notice would have to contain certain minimum information about the case and its basis.

The claimant and the defendant would have to give each other access to each other's medical records within 91 days after the notice. A defendant's failure to allow timely access to records would be penalized under provisions regarding affidavits of merit and interest on judgments (see below). Within 126 days after the notice, the defendant would have to furnish the claimant with a written response with certain information about the defense; failure to provide the information on time would entitle the claimant to file suit immediately.

Affidavits of merit. Existing law requires plaintiffs and defendants either to post a \$2,000 bond or other financial security for payment of costs, or to file an affidavit of meritorious claim or defense. The bill would delete provisions allowing security for costs to be filed in lieu of an affidavit. Affidavits would have to contain information on the basis and allegations of the case, as prescribed by the bill (this information would parallel that to be exchanged under the 182-day notice provisions). If the defendant failed to allow access to medical records as required by the 182-day notice provisions, a plaintiff's affidavit could be filed 91 days after the complaint.

Professional privilege. Someone claiming malpractice would be considered to have waived the physician-patient privilege or similar privilege with respect to a person or entity who was involved, whether or not that person was a party to the claim or action. A defendant could communicate with other health facilities or professionals to obtain relevant information and prepare a defense; disclosure of that information to the defendant would not constitute a violation of the physician-patient privilege.

Arbitration. The bill would repeal Chapter 50a of the act, which provides for arbitration of medical malpractice lawsuits, and replace it with provisions for voluntary binding arbitration that would apply to cases where damages claimed amounted to \$75,000 or less, including interest and costs. The bill's arbitration procedures would be available during the 182-day notice period (that is, after notice was given but before a case was filed). Unlike current law, which calls for an arbitration panel consisting of a doctor, a lawyer, and someone who is neither, under the bill the parties would agree to a process for the selection of a single arbitrator. The arbitration agreement would also apportion the costs of the arbitration and contain waivers of the right to trial and appeal; defendants would waive the question of liability. The parties could agree to a total amount of damages greater than \$75,000.

There would be no live testimony, and court rules on discovery would not apply, although certain information would have to be exchanged upon request under deadlines established by the arbitrator. The arbitrator could issue the decision with or without holding a formal hearing, although he or she would have to conduct at least one telephone conference call or meeting with the

parties. If there was a hearing, it would have to be limited to presentation of oral arguments. The arbitrator would issue a written decision stating the factual basis for it and the amount of any award. There would be no right to appeal the award.

**Settlements.** If a case was settled (with or without court supervision), the parties would have to file a copy of the settlement agreement with the appropriate bureau of the Department of Commerce. The information would be confidential except for use by the department in an investigation; it would not be subject to the Freedom of Information Act.

**Mediation.** Current law provides for mediation of medical malpractice suits. Under the bill, if a defendant rejected a mediation panel's evaluation, but the plaintiff did not, and the case went to trial, the defendant's insurer would be liable for the plaintiff's costs unless the verdict was more favorable to the defendant than the mediation evaluation.

**Statute of limitations--general.** Generally, a medical malpractice action must be commenced within two years after the injury was caused, or six months after it was or should have been discovered, whichever was later; however, in no event may it be commenced more than six years after the injury was caused. However, for certain injuries, this six-year statute of repose does not apply; the bill would eliminate an exception for situations where a foreign object was wrongfully left in the patient's body, and limit an exception for reproductive injuries to those where there was a loss of the ability to procreate in someone under 35 years old. An exception for fraudulent conduct of a health care provider would be retained. Giving 182-day notice as required by the bill would toll (suspend the running of) the statute of limitations.

**Statute of limitations--minors.** The running of the statute of limitations is suspended until someone reaches age 13. For injuries to a child that occur before age thirteen, action must be commenced by the time the child reaches age 15; after age 13 the regular medical malpractice statute of limitations applies. Under the bill, the running of the statute of limitations would be suspended until a child reached age 10, and an action for a child under that age would have to be commenced before the child's twelfth birthday, or within the regular medical malpractice period of limitations, whichever was

later (the six-year statute of repose would not apply).

However, if an injury to the reproductive system of someone under age 13 was claimed, the claim would have to be brought before his or her fifteenth birthday or before the regular medical malpractice statute of limitations would apply, whichever was later (the six-year statute of repose would not apply).

**Interest on judgments.** The law now provides for the calculation and payment of interest on judgments. Under the bill, if a medical malpractice defendant failed to allow access to records as required by the 182-day notice provisions, the court would order that interest be calculated from the date notice was given to the date of satisfaction of the judgment. The injured party, and not his or her attorney, would receive the interest accruing on the portion of a judgment represented by the attorney's fee.

**House Bill 4403** would amend the Insurance Code (MCL 500.2204) to require an commercial liability insurer to pay the plaintiff's attorney fees and court costs when an insured defendant had rejected a mediation evaluation under the Revised Judicature Act, the plaintiff had not rejected it, and the case went to trial. However, the payment requirement would not apply if the verdict was more favorable to the defendant than the mediation evaluation. The bill could not take effect unless Senate Bill 270 was enacted.

**House Bill 4404** would amend the Public Health Code (MCL 333.16280 and 333.21517) to require each physician, dentist, psychologist, chiropractor, and podiatrist to maintain financial responsibility for medical malpractice actions. The financial responsibility would have to be one of the following: a \$200,000 surety bond or irrevocable letter of credit; an escrow account containing at least \$200,000 in cash or unencumbered securities; or professional liability insurance coverage with limits of at least \$200,000 per claim and \$600,000 in the aggregate.

Someone licensed on or before October 1, 1993 would have to file proof of financial responsibility with his or her licensing board by January 1, 1994. Others would have to file proof within 90 days after the issuance of a license. After the initial filing, proof would have to be filed annually.

Financial responsibility requirements would not apply to someone with a hospital affiliation, if the hospital provided the equivalent amount of financial responsibility. However, if the person practiced outside of the hospital, he or she would have to maintain financial responsibility for that portion of his or her practice performed outside the hospital. Financial responsibility requirements would not apply to someone whose practice outside of a hospital consisted of at least 25 percent uninsured and Medicaid patients, based on the total number of patients treated annually by the person. Proof of such a practice would have to be filed with the person's board.

A hospital would be prohibited from granting privileges to a physician unless financial responsibility requirements were met. Compliance with the bill would not be a condition of licensure for a physician or other person required to maintain financial responsibility.

The bill could not take effect unless Senate Bill 270 was enacted.

House Bill 4033 would amend the Mental Health Code to forbid a licensee under the code (a mental hospital, psychiatric hospital, or psychiatric unit) from granting privileges to physician who was not in compliance with the financial responsibility requirements of House Bill 4404, unless the licensee covered the physician as allowed by House Bill 4404. The bill could not take effect unless Senate Bill 270 was enacted.

### **HOUSE COMMITTEE ACTION:**

The House Judiciary Committee adopted a substitute for Senate Bill 270 that differed from the Senate-passed bill in proposing new provisions on arbitration, and linking medical malpractice reform to requirements for financial responsibility. The substitute's provisions on contingency fees, noneconomic losses, expert witnesses, and the statute of limitations also differed from those in the Senate-passed version.

### **FISCAL IMPLICATIONS:**

Fiscal information is not available at present.

### **ARGUMENTS:**

#### ***For:***

The bills would go far to discourage unjustified medical malpractice lawsuits and reduce the costs of the medical malpractice liability system, thus helping to contain spiraling health care costs, stem the flight of physicians out of Michigan, and assure the citizens of this state access to affordable health care. Stricter limits on pain and suffering awards, limits on contingency fees, early notice requirements, and new arbitration provisions would reduce litigation costs by encouraging arbitration and early settlement and curbing excessive awards.

New limits on pain and suffering awards and the medical malpractice statute of limitations would further help to reduce insurance costs by addressing the uncertainties and long period of exposure in this highly volatile area of insurance. Without such measures and controls on the costs of litigation, there is little to be done to reduce premiums, for neither they nor profits are inflated: the major malpractice insurers are customer-owned (that is owned by physicians or hospitals), and the insurance bureau reports a healthy degree of competition in the marketplace.

Victims of medical malpractice would not be ignored, however: requirements for physicians to maintain financial responsibility, provisions on payment of judgment interest, and incentives to arbitrate small suits that might otherwise go begging for legal representation all would help to put money in injured patients' pockets. Links to the physician discipline package would recognize the need to also protect patients by reducing the incidence of malpractice. And, eventually, the bills would help patients by holding back health care costs, and not only through effects on premiums; far greater savings are likely through easing physicians' litigation fears, thus reducing the need to practice "defensive medicine" which drives up the cost of health care through the use of high technology and second opinions.

The bills offer a balanced compromise that should streamline the system to the ultimate benefit of both patients and health care providers.

***Against:***

Many dispute whether there really is any sort of malpractice "crisis" that demands resolution, especially a resolution that restricts legal recourse for victims of malpractice. If Michigan has more than its share of malpractice lawsuits, it is because Michigan ranks low in its effectiveness in getting bad doctors out of business, and because insufficient attention has been devoted to risk management in hospitals, where the vast majority of malpractice claims arise. If insurance costs too much, it is because insurers are charging too much; profits are up in recent years, but premiums continue to rise. More carriers are writing malpractice insurance in Michigan, and availability problems have decreased.

The numbers of physicians are up, not down, thus countering assertions that Michigan's malpractice climate has led to problems in obtaining care. Moreover, it is unreasonable to hold the medical malpractice system responsible for the lack of health care for residents of poor urban and rural areas of Michigan; recruiting doctors to such places is a problem across the country, and has long been so.

If rising costs of health care are a real concern, then attacking the medical liability system would have little effect: insurance premiums represent only one or two percent of total health care costs, and "defensive medicine" habits are unlikely to be affected (nor should they, say some, as the caution and thoroughness that characterize "defensive" medicine also characterize good medicine).

Virtually every assertion made by the proponents of medical liability reform has been challenged with conflicting data. Many believe the picture is not as clear as some present it, and urge restraint before prematurely assuming the reforms of 1986 need strengthening. Rather than again taking aim at the victims of malpractice, reformers should first look to the defects of the insurance and physician discipline systems.

***Against:***

While the reforms are a step in the right direction, they do not go far enough. Overly broad exceptions to caps on noneconomic awards would continue to allow half or more of major cases to get out from under the limits, as the language could be stretched to allow the exemption of many relatively minor injuries. A permanent limp, for example, could be

argued to meet the exception for permanent disability.

Contingency fee provisions also are inadequate: without firm limits on attorneys' financial incentives to seek windfall awards in marginal cases, case filings are unlikely to decline. Worse, the proposed sliding scale would give attorneys an incentive to push for trial by giving them a bigger take than if they settled out of court or accepted arbitration.

Finally, Senate Bill 270 would do nothing to rid the system of professional witnesses. By allowing expert witnesses to qualify if they spend a "substantial portion" of their time in the necessary fields, the bill would continue to allow justice to be subverted by traveling "guns for hire."

***Against:***

Limits on contingency fees raise a number of constitutional issues. Being a matter of practice and procedure, contingency fees are properly within the constitutionally-determined purview of the supreme court, and are at present set by supreme court rule. An attempt to regulate contingency fees in statute would conflict with the court's constitutional rule-making authority and the doctrine of separation of powers. Statutory limits on plaintiffs' attorney fees may also violate constitutional provisions for equal protection, if defendants' fees are not also regulated. Finally, by inserting itself into a matter that is between attorney and client, Senate Bill 270 may intrude on the right to contract.

***Against:***

A major problem with the current state of affairs is the heavy financial burdens that a physician must assume to practice in Michigan. Rather than ease those burdens, the legislation would add to them by requiring physicians to maintain a specified form of financial responsibility or lose hospital privileges. The financial responsibility requirements would tend to exacerbate problems with physicians leaving practice in Michigan.

***POSITIONS:***

The State Bar of Michigan opposed Senate Bill 270 as passed by the Senate, has concerns about the constitutionality of provisions on contingency fees, and is supportive of portions of the House substitute. (3-30-93)

The Michigan Trial Lawyers Association does not support the package. (3-30-93)

The Advocacy Organization for Patients and Providers does not believe the package will resolve the problem, in part because it is not linked to insurance reform. (3-30-93)

Physicians Insurance Company of Michigan (PICOM) opposes the package, but could support it with amendments. (3-30-93)

The Michigan Medical Liability Reform Coalition opposes the bills. (3-30-93) Organizations in the 75-member coalition include the following:

Greater Detroit Chamber of Commerce  
Michigan Association for Local Public Health  
Michigan Association of Osteopathic Physicians and Surgeons  
Michigan Dental Association  
Michigan Farm Bureau  
Michigan Hospital Association  
Michigan Hospital Association Mutual Insurance Company  
Michigan Insurance Federation  
Michigan Manufacturers Association  
Michigan Physicians Mutual Liability Company  
Michigan State Medical Society  
Physicians Insurance Company of Michigan

# EXHIBIT F

[April 27, 1995

No. 36]

1995 JOURNAL OF THE HOUSE

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In The Chair: Fitzgerald

Rep. Clack moved to amend the bill as follows:

1. Amend page 2, following line 6, by inserting:

"Sec. 1483. (1) In an action for damages alleging medical malpractice by or against a person or party, the total amount of damages for noneconomic loss recoverable by all plaintiffs, resulting from the negligence of all defendants, shall not exceed \$280,000.00 unless, as the result of the negligence of 1 or more of the defendants, 1 or more of the following exceptions apply as determined by the court pursuant to section 6304, in which case damages for noneconomic loss shall not exceed \$500,000.00:

(a) The plaintiff is hemiplegic, paraplegic, or quadriplegic resulting in a total permanent functional loss of 1 or more limbs caused by 1 or more of the following:

(i) Injury to the brain.

(ii) Injury to the spinal cord.

(b) The plaintiff has permanently impaired cognitive capacity rendering him or her incapable of making independent, responsible life decisions and permanently incapable of independently performing the activities of normal, daily living.

(c) ~~There has been~~ THE PLAINTIFF HAS permanent loss of or damage to a reproductive organ resulting in the inability to procreate.

(D) THE INDIVIDUAL UPON WHOM THE ACTION IS BASED DIED AS A RESULT OF THE MEDICAL MALPRACTICE.

(2) In awarding damages in an action alleging medical malpractice, the trier of fact shall itemize damages into damages for economic loss and damages for noneconomic loss.

(3) As used in this section, "noneconomic loss" means damages or loss due to pain, suffering, inconvenience, physical impairment, physical disfigurement, or other noneconomic loss.

(4) The state treasurer shall adjust the limitation on damages for noneconomic loss set forth in subsection (1) by an amount determined by the state treasurer at the end of each calendar year to reflect the cumulative annual percentage change in the consumer price index. As used in this subsection, "consumer price index" means the most comprehensive index of consumer prices available for this state from the bureau of labor statistics of the United States department of labor."

The question being on the adoption of the amendment offered by Rep. Clack.  
Rep. Wallace demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendment offered by Rep. Clack.

The amendment was not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows:

## Roll Call No. 379

## Yeas—43

Agee	DeHart	Kelly	Price
Anthony	DeMars	Kilpatrick	Profit
Baade	Dobronski	LaForge	Schroer
Bennane	Emerson	Leland	Scott
Berman	Freeman	Martinez	Tesanovich
Brater	Gire	Murphy	Vaughn
Brewer	Gubow	Olshove	Wallace
Cherry	Hanley	Owen	Weeks
Ciaramitaro	Harder	Palamara	Willard
Cropsey	Hertel	Parks	Yokich
Curtis	Hood	Pitoniak	

## Nays—58

Alley	Geiger	Jersevic	Munsell
Bankes	Gernaat	Johnson	Nye
Bobier	Gilmer	Kaza	Oxender
Bodem	Gnodtke	Kukuk	Perricone
Brackenridge	Goschka	Law	Porreca
Bryant	Green	LeTarte	Randall
Bullard	Griffin	Llewellyn	Rhead
Bush	Gustafson	London	Rocca
Byl	Hammerstrom	Lowe	Ryan
Crissman	Hill	McBryde	Sikkema
Dalman	Hillegonds	McManus	Voorhees
DeLange	Horton	McNutt	Walberg
Dolan	Jamian	Middaugh	Wetters
Fitzgerald	Jaye	Middleton	Whyman
Galloway	Jellema		

In The Chair: Fitzgerald

Rep. Clack moved to amend the bill as follows:

1. Amend page 6, line 10, after "SECTION" by inserting "2957 OR".

2. Amend page 6, line 20, after "FAULT." by inserting "IF THE TRIER OF FACT DETERMINES FROM EVIDENCE PRESENTED DURING TRIAL THAT DAMAGES RESULTED FROM 2 OR MORE DEFENDANTS ACTING IN CONCERT, THE TRIER OF FACT SHALL ALLOCATE A PERCENTAGE OF FAULT TO THOSE DEFENDANTS AS A GROUP AND LIABILITY AS BETWEEN THOSE DEFENDANTS IS JOINT AND SEVERAL."

The question being on the adoption of the amendments offered by Rep. Clack,

Rep. Wallace demanded the yeas and nays.

The demand was supported.

The question being on the adoption of the amendments offered by Rep. Clack,

The amendments were not adopted, a majority of the members serving not voting therefor, by yeas and nays, as follows: